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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Civil Action No. 2072-N

ARLAM CARR, JR., a minor, by ARLAM CARR and JOHNNNIE CARR, his parents and next friends; CHARLES LEE BELL, a minor, by CHARLIE BELL and EMMA M. BELL, his parents and next friends; WILLIAM H. DAY, a minor, by HELEN B. DAY, his mother and next friend; JOSEPHINE MARTIN, a minor, by NETTIE MARTIN, her mother and next friend; JOAN MASTIN, a minor, by FRANK MASTIN and PEARLINE MASTIN, her parents and next friends; CONSTANCE SMITH, a minor, by JOHNNIE SMITH and BERTHA SMITH, her parents and next friends; and MAE CAROLYN THOMAS, a minor, by LEE C. THOMAS and SOPHIA L. THOMAS, her parents and next friends,

Plaintiffs,

UNITED STATES OF AMERICA,

Amicus Curiae,

VS.

MONTGOMERY COUNTY BOARD OF EDUCATION: JAMES W. RUTLAND, JR., FRED BEAR, GEORGE C. STARKE, GEORGE A. DOZIER, DR. EDWARD J. WALKER, ISABELLE B. THOMASSON and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER MCKEE, Superintendent of Education of Montgomery County, Alabama,

Defendants.

For plaintiff:

Fred D. Gray
352 Dexter Ave.
Montgomery, Ala. 36104

Jack Greenberg
Charles H. Jones, Jr.
10 Columbus Circle
New York, N.Y. 10019

Stephen J. Pollak, Asst. Atty. Gen. of U.S. for Civil Rights, Washington, D.C. and Ben Hardeman, U.S. Attorney, P.O. Box 197, Montgomery, Ala., for amicus

For defendant:

Vaughan Hill Robison for
Montgomery County Board of Education
P.O. Box 901
Montgomery, Alabama 36102

Also: Joseph D. Phelps (same address)

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DATE	PROCEEDINGS
5/11/64	Complaint filed and summons issued.
5/11/64	Motion for preliminary injunction.
5/12/64	Marshal's return on summons and complaint—Executed 5/11/64 by personal service on Dr. Robert Parker, Dr. W. E. Goodwin, Mr. Fred Bear; further executed 5/12/64 by serving the Montgomery County Board of Education by leaving a copy with Walter McKee, Supt. Montgomery County Board of Education;

DATE	PROCEEDINGS
	further by personal service on Isabelle B. Thomasson, Walter McKee, Harold M. Harris and George A. Dozier; further service on Dr. H. P. Dawson was had by leaving a copy with Mr. H. P. Dawson, at their residence.
5/18/64	Order appointing as amicus curiae Ben Hardeman, U. S. Attorney, and John Doar, Attorney, Civil Rights Division, Department of Justice, Washington, D. C., and/or any other attorney with the Department of Justice designated by the Honorable Robert Kennedy, Attorney General of the United States.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to Plaintiff Arlam Carr, Jr., a minor, by Arlam Carr and Johnnie Carr, his parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to plaintiff Bathsheba L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, her parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to John W. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to

DATE	PROCEEDINGS
	plaintiff James G. Thompson, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to plaintiff Phillip L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.
5/30/64	Defendants' motion to dismiss complaint and the motion for preliminary injunction.
6/3/64	Plaintiffs' notice of the taking of the deposition of Walter McKee, Superintendent of Schools of Montgomery County, Alabama, at 9:00 a.m. June 9, 1964.
6/5/64	Motion of Defendant Walter McKee that deposition, as scheduled by plaintiffs, be stayed and continued until a date set and determined by the Court subsequent to June 10, 1964.
6/5/64	Order denying motion of defendant Walter McKee seeking to have the Court stay the taking of his deposition by attorneys for the plaintiffs from the schedules date of June 9, 1964.
6/10/64	Answers of Plaintiff Arlam Carr to Interrogatories propounded by Defendant Montgomery County Board of Education.
6/10/64	Answers of Plaintiff James G. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.

DATE	PROCEEDINGS
6/10/64	Answers of Plaintiff John W. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.
6/10/64	Answers of Plaintiff Phillip L. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.
6/10/64	Answers of Plaintiff Bathsheba L. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.
6/20/64	Deposition of Mr. Walter McKee.*
6/25/64	Plaintiffs' Opposition to Defendants' Motion to dismiss.
6/30/64	Order denying defendants' motion to dismiss; further ORDER setting hearing on plaintiffs' motion for a preliminary injunction commencing at 9:30 a.m., July 29, 1964.
7/8/64	Defendants' answer to complaint.
7/9/64	Plaintiffs' request for admissions under Rule 36.
7/9/64	Plaintiffs' motion for production of documents for inspection and copying.
7/16/64	ORDER directing production of documents for inspection and copying.
7/17/64	Plaintiffs' motion for leave to file amendment to complaint.

* Being retained in District Court pending receipt of instructions for forwarding depositions, etc.

DATE	PROCEEDINGS
7/17/64	ORDER granting plaintiffs' motion to file amendment to complaint.
7/17/64	Amendment to complaint filed (substitution of parties plaintiff). Acceptance of service of motion and amendment by Vaughan Hill Robison, of counsel for defendants.
7/17/64	Defendants' answer to plaintiffs' request for admissions.
7/31/64	Memorandum opinion.
7/31/64	Decree. Defendants enjoined from operating segregated public schools in Montgomery County, Alabama, except in strict accordance with this Court's opinions and decrees; from failing to provide public education for plaintiffs and other members of their race on non-segregated basis; failing to make immediate start, commencing with first, tenth, eleventh, and twelfth grades for school year 1964-65, and failing to take such additional steps in elimination of racial discrimination for the 1965-66 school year as may be required by any desegregation plan approved by this Court. Defendants ordered to begin accepting applications for assignment or transfer from applicants to attend schools heretofore attended by a race other than their own, to report to this Court by 9 a.m. on Sept. 1, 1964, as to action taken on these applications, to publish

DATE	PROCEEDINGS
	for twice each week for the weeks beginning Aug. 2 and 9, 1964, a notice that applications will be accepted through August 14, 1964, and to file with this Court on or before January 15, 1965, their detailed plan for operation of Montgomery County school system commencing with 1965-66 school year. Jurisdiction of cause retained.
7/31/64	Writ of injunction in accordance with memorandum opinion and decree issued.
8/3/64	Marshal's returns on memorandum opinion, decree, and writ of injunction. Service on Montgomery County Board of Education by handing to and leaving copies with Walter McKee on 8/3/64. Personal service on Dr. Harris P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Dr. Robert Parker, Harold M. Harris, and Walter McKee on 8/3/64. Mrs. Isabelle Thomasson not served because she is out of district.
8/4/64	Marshal's further return on memorandum opinion, decree, and writ of injunction. Personal service on Fred Bear on 8/3/64.
8/12/64	Marshal's further return on memorandum opinion, decree, and writ of injunction. Personal service on Mrs. Isabelle B. Thomasson on 8/10/64.
9/ 1/64	Defendants' report, in accordance with Court order of 7/31/64, on applications for transfer and/or assignment pursuant to said order.

DATE	PROCEEDINGS
9/ 1/64	Plaintiffs' motion for further relief or order to show cause.
9/ 1/64	ORDER that defts. report by 3 p.m. 9/1/64 on reasons for rejecting applications.
9/ 1/64	Defendants' additional report on applications for transfer and/or assignment in response to plaintiffs' motion and Court order of 9/1/64.
9/ 1/64	Plaintiffs' amendment to motion for further relief.
9/ 5/64	Order approving and accepting the action taken by the Montgomery County Board of Education in granting the applications of 8 of the 29 Negro children who applied for transfer and/or assignment to schools previously attended by pupils of the white race.
12/12/64	Costs bill in amount of $274.04 received from plaintiffs' attorney. Costs to be taxed 12/22/64.
12/22/64	Costs taxed.
1/11/65	Suggestion of amicus curiae, the United States, for substitution of James W. Rutland, Jr., George C. Starke, and Dr. Edward J. Walker as parties defendant for Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin.
1/11/65	ORDER substituting James W. Rutland, Jr., George C. Starke, and Dr. Edward J. Walker as parties defendant for Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin.

DATE	PROCEEDINGS
	Clerk ordered to serve copies of memorandum opinion, decree, and writ of injunction filed 7/31/64 on the new parties by registered mail.
1/15/65	Plan of Montgomery County Board of Education for desegregating entire Montgomery County School System.
1/18/65	ORDER that any objections to proposed desegregation plan filed 1/15/65 be made in writing and filed on or before 2/16/65.
2/15/65	Motion of U.S., amicus curiae, for extension of time to 2/25/65 within which to file objections to defendants' desegregation plan and ORDER granting.
2/16/65	Plaintiffs' motion for extension of time within which to file objections to defendants' desegregation plan.
2/16/65	ORDER extending time for plaintiffs to file objections to plan to February 25, 1965.
2/23/65	Plaintiffs' objections to defendants' desegregation plan.
2/25/65	Objections of United States, as amicus curiae, to defendants' desegregation plan.
3/29/65	Plaintiffs' notice of taking the deposition of Walter McKee.
3/29/65	Defendants' motion for postponement of hearing on objections to desegregation plan and for stay of taking of deposition of Walter McKee.

DATE	PROCEEDINGS
3/30/65	ORDER that taking of deposition of Walter McKee be stayed until April 15, 1965, and that hearing upon objections to desegregation plan be continued until 10 a.m. on April 28, 1965.
4/21/65	Deposition of Walter McKee.*
4/24/65	Plaintiffs' amendment to objections to desegregation plan.
4/28/65	ORDER continuing hearing upon objections to proposed desegregation plan to 5/5/65 at 10 a.m.
5/ 6/65	Court reporter's transcript of proceedings at hearing upon objections to proposed desegregation plan on 5/5/65.

IN VOL. III AT PAGE 442.

5/18/65	ORDER that plan of desegregation be approved with following modifications: Grade 7 (in addition to grades 1, 2, 9, 10, 11, and 12) to be desegregated with school term commencing Sept. 1965; applications for transfer or assignment to these grades must be filed 7/20/65 on forms obtainable from office of Supt. of Education, said forms to be available between 6/21 and 7/20/65; that Supt. of Education direct principals to enclose in envelope with each child's report card for school term 1964-65 a notice as set out in the order; that notice also be published on June 13, 20, and 27 in a

* Being retained in District Court pending receipt of instructions for forwarding depositions, etc.

DATE	PROCEEDINGS
	newspaper of general circulation in Montgomery County; that Supt. of Education notify parents in writing on or before 8/17/65 of action taken upon applications for transfer or assignment; that Board of Education file on or before 1/14/66 its detailed plan for operation of Montgomery County Public School System commencing with 1966-67 school year. Jurisdiction of this cause specifically retained.
8/ 9/65	Defendants' report as to the action taken by the Montgomery County Board of Education for transfers, etc. filed pursuant to the Order of 5/18/65.
8/16/65	ORDER that objections, if any, to action taken by Montgomery County Board of Education be filed on or before 8/24/65. Hearing upon such objections set for 2 p.m. on 8/26/65.
8/19/65	Plaintiffs' notice of taking the deposition of Walter McKee.
8/24/65	Plaintiffs' objections to defendants' rejection of applications for transfer.
8/24/65	Objections of United States to defendants' rejection of applications for transfer.
8/27/65	ORDER overruling objections of plaintiffs and the U.S. to action of Board of Education in denying certain applications for transfer but sustaining objections as to certain other applications. Board ordered to grant applications for

DATE	PROCEEDINGS
	transfer of six named applicants. Objection and request on part of plaintiffs based on contention that the defendants have acted in bad faith to the point that the Alabama Pupil Placement Law should be declared unconstitutional denied. Action of defendants as set out in report of 8/9/65 in all other respects affirmed.
9/15/65	Court reporter's memorandum transcript to identify plaintiffs' exhibits 4, 5, and 6 at hearing on 8/26/65. Exhibits attached.
1/14/66	Montgomery County School Board's plan for desegregation of public schools.
1/19/66	ORDER that objections, if any, to Board's plan be filed on or before 2/18/66. (Copies of order mailed to Gray & Seay, Jack Greenberg, et al., Ben Hardeman, John Doar, Hill, Robison & Belser.)
2/18/66	Amicus Curiae's objections to desegregation plan.
2/18/66	ORDER consolidating this case with 2073-N for purpose of hearing objections to desegregation plans submitted. Hearing set for 9 a.m. on 3/11/66. (Copies mailed to counsel.)
2/18/66	Plaintiffs' objections to desegregation plan.
3/11/66	Court reporter's transcript of remarks read into record by Court at conclusion of hearing on 3/11/66.

DATE	PROCEEDINGS
3/22/66	ORDER that defendants execute the plan for desegregation attached to this order and incorporated therein; that they report to Court on or before June 7, and each such date until further order, the anticipated student enrollment in each school by race and grade for next school year; that they report by June 15, and each such date until further order, the planned assignments of professional staff to each school for next school year by race and grade; that they report no later than September 20, and each such date until further order, the actual data for the student enrollment and professional assignment. Court specifically retains jurisdiction of parties and cause. (Copies mailed to counsel and delivered to Marshal for service on defendants.)
3/25/66	Marshal's returns on service of order of 3/22/66. Service on Montgomery County Board of Education by serving Walter T. McKee, Superintendent, on 3/22/66; personal service on Walter T. McKee, Superintendent, Montgomery County Board of Education, on 3/22/66; personal service on George A. Dozier, Mrs. Isabelle Thomasson, Fred Bear, and Edward J. Walker on 3/23/66; personal service on James W. Rutland on 3/24/66; personal service on George C. Starke and Dr. Robert Parker on 3/25/66.
5/13/66	Costs in amount of $239.16 taxed per costs bill received from plaintiffs.

DATE	PROCEEDINGS
6/ 7/66	Defendants' report in accordance with order of 3/22/66. (In brown envelope)
6/15/66	Report of Board of Education in compliance with order of Court of March 22, 1966. (In brown envelope)
8/18/66	ORDER amending order of March 22, 1966. Montgomery County Board of Education allowed until school year 1967-68 to commence desegregation of faculty and professional staff. Board ordered to report to Court by June 15, 1967, planned assignments of faculty and professional staff. (Copies mailed to counsel.)
9/12/66	Plaintiffs' motion to have Court admit Willie Robert Bell to Lanier High School.
9/13/66	ORDER setting for hearing Plaintiffs' motion seeking order directing defendants to admit Willie Robert Bell as student to Sidney Lanier High School, on Wednesday, Sept. 14, 1966, at 2:00 p.m. (Copies mailed to counsel)
9/14/66	Defendants' answer to petition filed on 9/12/66 by attorneys for plaintiffs.
9/14/66	ORDER continuing petition for admission of Willie Robert Bell to Lanier High School until further order. (Copies mailed to counsel.)
9/20/66	Defendants' report, in accordance with order of 3/22/66, on student enrollment and professional assignments. (In brown envelope)

DATE	PROCEEDINGS
10/ 3/66	Plaintiffs' motion to dismiss the petition of Willie Robert Bell.
10/ 5/66	ORDER, upon plaintiffs' motion and without any objection by defendants, dismissing petition of Willie Robert Bell. (Copies mailed to counsel.)

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4/11/67	Plaintiffs' motion for further relief.
4/28/67	ORDER requiring defendants to show cause at 9 a.m. on May 25, 1967, why they should not be required to adopt desegregation plans for the Montgomery County school system that comply with the standards embodied in U.S. and Linda Stout, et al. v. Jefferson County Board of Education, et al., and in Exhibit "A" to this Court's decree of March 22, 1967, in Lee, et al. v. Macon County Board of Education, et al., Civil Action No. 604-E, and why they should not be required to put such plans into effect commencing with the 1967-68 school year. U.S., as amicus curiae, ordered to appear and participate in said proceedings. Clerk ordered to attach to this order copies of the opinion and decree entered March 22, 1967, in CA No. 604-E.
4/28/67	Copies of show cause order of 4/28/67, with attachments as ordered, mailed to counsel; copy delivered to U.S. Marshal for service on Walter McKee, Superintendent of Education of Montgomery County; copies mailed by cer-

DATE	PROCEEDINGS
	tified mail, return receipt requested, to the members of the Montgomery County Board of Education.
5/ 2/67	Marshal's return on service of show cause order of 4/28/67 with its attachments. Personal service on Walter McKee, Superintendent of Education of Montgomery County, on 5/1/67.
6/ 1/67	ORDER that the defendants adopt and implement the plan for desegregation of the public school system of Montgomery County attached to this order. Copies mailed to counsel; copies delivered to Marshal for service on defendants.
6/ 5/67	Marshal's returns on service of order of 6/1/67. Service on Board of Education and Superintendent of Education on 6/1/67; service on members of the Board on 6/2/67. (Dr. Franklin Jackson served in place of George A. Dozier.)
6/ 7/67	Defendants' report, in accordance with order of 6/1/67, on choice period.
6/15/67	Defendants' report, in accordance with order of 6/1/67, on faculty desegregation. REPORTS OF 6/7/67 and 6/15/67 in brown envelope.
8/17/67	Notice of motion and motion of U.S. for further relief.
8/30/67	Plaintiffs' joinder in motion of U.S. for further relief.

DATE	PROCEEDINGS
9/ 1/67	Defendants' answer to motion of U.S. for further relief.
1/30/68	Notice of U.S. of taking discovery deposition of Walter T. McKee, Superintendent of Education for Montgomery County.
2/ 1/68	Further answer of Montgomery County Board of Education to motion of U.S., filed 8/17/67, for further relief.
2/ 2/68	Deposition of Walter T. McKee.*
2/ 7/68	Notice of motion and motion of U.S. for further relief.
2/9/68	Plaintiffs' joinder in motion of U.S. for further relief, and motion for still further relief.
2/17/68	Stipulation of parties concerning persons available for substitute teaching in Montgomery public schools.
2/24/68	Memorandum opinion (and order). Defendants ordered to adopt and implement the attached supplement to the desegregation plan ordered in this case on June 1, 1967. (The supplement calls for two full-time teachers of the opposite race at every school with fewer than 12 teachers and at schools with 12 or more teachers at least one faculty member of the opposite race to six of the majority race at that school; for desegregation of the substi-

* Being retained in District Court pending receipt of instructions for forwarding exhibits and depositions.

DATE PROCEEDINGS

tute teacher rolls, student teachers, and the faculties of night schools. School board to obtain approval from State Supt. of Education for all proposed construction of new or expanded facilities; the State Superintendent, upon receipt of such proposals to take appropriate action in accordance with decree of 3/22/67 in Lee v. Macon, CA No. 604-E. School board to adopt nondiscriminatory bus routes. School board to take affirmative action, as set out in the opinion, to eradicate the effect of the efforts it and its employees have made to create the impression throughout the school system that Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School are to be used primarily by white students. Transportation to be provided to Jefferson Davis High School, Peter Crump Elementary School, and Southlawn Elementary School; transportation to Jefferson Davis to be provided to each student who chooses it and who lives outside the City of Montgomery, and more than two miles from the school, and who lives nearer Jefferson Davis than either Lee or Lanier in the absence of compelling circumstances approved by the Court. Choice of each Negro who chooses Jefferson Davis during the 1968-69 school year to be honored in the absence of compelling circumstances approved by the Court. Board to report to Court every three

DATE	PROCEEDINGS
	months, beginning March 15, 1968, on the steps taken to comply with desegregation plan ordered into effect June 1, 1967, and this supplement.) Copies mailed to counsel.
2/24/68	Writ of injunction issued to defendants in accordance with memorandum opinion and delivered to Marshal, with copies of opinion, for service on defendants.
2/26/68	Marshal's returns on service of writ of injunction and memorandum opinion. Personal service on Walter McKee, Superintendent of Education for Montgomery County, and on Fred C. Bear, Dr. J. Edward Walker, James W. Rutland, Jr., and Mrs. Isabelle Thomasson, Members of Montgomery County Board of Education, on 2/24/68. Service on Montgomery County Board of Education on 2/24/68 by service on Walter McKee; service on Dr. Robert Parker and Dr. Franklin Jackson, member of said Board, on 2/24/68 by leaving copies with their wives at their residences.
2/27/68	Defendants' notice of appeal to U.S. Court of Appeals for Fifth Circuit. (Copies of notice mailed by Clerk to Gray, Seay, Langford & Pryor, Jack Greenberg and Charles H. Jones, Jr., Hon. Stephen Pollak, Asst. Atty. Gen., Civil Rights Div., U.S. Dept. of Justice, and Ben Hardeman, U.S. Atty.)
2/27/68	Court reporter's excerpt transcript—testimony of Herman L. Scott at hearing on 2/9/68.

DATE PROCEEDINGS

IN VOL. III AT PAGE 670

2/28/68 Defendants' bond for costs on appeal. ($250 deposited in registry fund.)

2/28/68 Defendants' motion for suspension and stay of injunction and order during pendency of appeal.

3/2/68 ORDER amending order and injunction of February 24, 1968. That portion of Part IV, C providing that the school board will provide transportation to Jefferson Davis High School for students who live more than two miles from the school and outside the City and closer to this school than Lee or Lanier amended to provide such transportation if said students live closer to Jefferson Davis than to Lee, Lanier or Montgomery County High School. Effective date of Part I, D (relating to ratio of days taught by white substitute teachers to number of days taught by Negro substitute teachers) changed from March 1, 1968, to September, 1968; effective date of Part I, E (relating to ratio of number of days taught by white student teachers to number of days taught by Negro student teachers) changed from March 1, 1968, to September, 1968. Attachment A (letter to students) informing students that they are eligible to attend Jefferson Davis High School if they choose to do so amended to inform students that they are eligible to *choose* to attend Jefferson Davis High School if they

DATE	PROCEEDINGS
	desire to do so. That portion of Part I, B providing that every school with fewer than 12 teachers will have two full-time teachers whose race is different from the race of the majority of faculty and staff amended to provide that such schools will have at least one full-time teacher whose race is different from the race of the majority of faculty and staff. (Copies mailed to counsel; copies mailed by certified mail, return receipt requested, to defendants and State Superintendent of Education.)
3/2/68	ORDER that effective date for complying with, and making plans to comply with, those provisions of the injunction of Feb. 24, 1968, set out in Part I, B (faculty desegregation); Part IV, C (transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School), and Part IV, D (the honoring of choices of Negro students who choose to attend Jefferson Davis High School during 1968-69 school year) be stayed until August 1, 1968. (Copies mailed to counsel; copies mailed by certified mail, return receipt requested, to defendants and State Superintendent of Education.)
3/6/68	Defendants' motion for leave to amend notice of appeal.
3/6/68	ORDER granting defendants' motion for leave to amend notice of appeal.

DATE PROCEEDINGS

3/6/68 Amended notice of appeal filed by defendants. (Copies of amended notice, motion and order mailed to Gray, Seay, Langford & Pryor; Jack Greenberg, et al., Hon. Stephen Pollak, Hon. Ben Hardeman, and U.S. Dept. of Justice Attorneys, Selma, Ala.)

3/6/68 Appellants' statement of points.

VOLUME III—RECORD PAGES 442-698 (Transcript filed 5/6/65 appears at page 442)

3/6/68 Court reporter's memorandum transcript of comments at conclusion of hearing on May 25, 1967.

3/6/68 Court reporter's transcript of hearing September 5, 1967.

3/11/68 Court reporter's transcript of hearing February 9, 1968.

3/11/68 Clerk's certificate as to record. (Not included —updated March 20, 1968)

3/11/68 Record mailed by certified air mail to Clerk, U.S. Court of Appeals, Room 536-A, Old Post Office Building, Atlanta, Ga. 30301.

3/13/68 ORDER (entered by CCA on 3/12/68) of Court of Appeals granting joint motion of parties for expedited hearing and submission of appeal on original record and typewritten briefs provided 2 extra xeroxed copies of the original record are prepared after record has been appropriately indexed, numbered and certi-

DATE	PROCEEDINGS
	fied by Clerk of District Court. Appellants' xeroxed brief to be filed and served on all opposing parties by April 5 and appellees' brief to be filed no later than April 25.
3/18/68	Defendants' report in accordance with Part V of desegregation plan attached to memorandum opinion of Feb. 24, 1968. (In brown envelope.)
3/20/68	Clerk's certificate as to record.

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Complaint

(Filed May 11, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The jurisdiction of this court is invoked pursuant to the provisions of Title 28, United States Code, Section 1343(3), this being a suit in equity, authorized by law (Title 42, United States Code, Section 1983) to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation, under color of statute, ordinance, regulation, custom or usage of a state, of rights, privileges and immunities secured by the Constitution and laws of the United States. The rights, privileges and immunities sought to be secured by this action are rights, privileges and immunities secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, as hereinafter more fully appears.

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II

This is a proceeding for a preliminary and permanent injunction enjoining the Montgomery County Board of Education, its members and the Superintendent of Education, Walter McKee, from continuing their policy, practice, custom and usage of operating a dual school system in Montgomery County, Alabama, based wholly on the

race and color of children attending schools in said county. This is also a proceeding to enjoin said defendants from assigning students, teachers and other school personnel to the schools operated and controlled by them on the basis of race, and to enjoin the use of any funds or property in such manner as to perpetuate a compulsory biracial school system in Montgomery County.

III

The plaintiffs in this case are Arlam Carr, Jr., a minor by Arlam Carr and Johnnie Carr his parents and next friends; and Bathsheba L. Thompson, John W. Thompson, James G. Thompson, and Phillip L. Thompson, minors, by Bishop S. Thompson, Sr. and Lois E. Thompson, their parents and next friends. Plaintiffs bring this action as a class suit pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of other Negro children and their parents similarly situated, all of whom are affected by the policy, practice, custom and usage complained of herein as will more fully appear. The members of the class on behalf of which plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court, but there are common questions of law and fact involved; common grievances arising out of common wrongs and common relief is sought for each of the plaintiffs individually and for each member of the class. Plaintiffs fairly and adequately represent the interest of the class.

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IV

Infant and adult plaintiffs are Negro citizens of the United States and of the State of Alabama and are

presently residing in Montgomery County, Alabama. The minor plaintiffs are either attending public schools in Montgomery County, Alabama, managed, controlled and operated by defendants herein or are eligible to attend such schools. The schools which minor plaintiffs currently attend are all limited by defendants to attendance by Negro children pursuant to the policy, practice, custom and usage of defendants of operating a compulsory biracial school system and assigning school children therein and other personnel on the grounds of race.

V

Defendants are the Montgomery County Board of Education, Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Mrs. Isabelle B. Thomasson and Dr. Robert Parker, members of the Montgomery County Board of Education, and Walter McKee, Superintendent of Education of Montgomery County, Alabama. The defendant Board is charged by the laws of the State of Alabama with the duty of operating a system of free public schools in Montgomery County and said Board is presently operating the public schools in the aforesaid county pursuant to those laws. Defendant, Walter McKee, as the Superintendent of Schools for Montgomery County, is the chief administrative officer of the Board. Defendants are sued in their individual as well as in their official capacity.

VI

Defendants, acting under color of the laws of Alabama, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the pub-

lic school system in Montgomery County, Alabama on a racially segregated basis. Defendants maintain and operate a compulsory biracial school system by the use of

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dual school zone or attendance areas for white and Negro pupils. Using the dual attendance areas, defendants make initial assignments of students to the public schools under their control on the grounds of race and color. Principals, teachers and other professional personnel under defendants' jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated. Students assigned initially to elementary schools denominated as Negro, are thereafter assigned solely to high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as Negro nor are assignments of students, teachers, principals or other personnel of the Negro race assigned to schools designated as white. Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the formulation of budgets, and the disbursement of school funds. Specifically, defendants construct elementary and high schools with reference to the maintenance of a compulsory biracial school system. Defendants herein also limit the participation in extra-curricular activities in the schools to one or the other race, separately.

VII

On or about April 22, 1964, Mr. Fred D. Gray, an attorney acting on behalf of the plaintiffs herein, wrote to

defendant Walter McKee and the defendant Board members, requesting a change of the policy, practice, custom and usage of operating a compulsory biracial school system, and petitioned said defendants to refrain from continuing the acts complained of therein (a copy of this petition is attached hereto, marked Ex. A, and made a part of this complaint). The plaintiffs, in essence requested, and seek herein, the complete reorganization of the Montgomery County school system on a nonracial basis.

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VIII

Although the defendant Board was duly placed on notice that plaintiffs and members of their class wished to have the Montgomery County public schools desegregated in accordance with the Supreme Court's school desegregation decision of 1954, and although they made specific demands upon said Board, as contained in the aforementioned petition (see Ex. A), to the date of the filing of this complaint, none of the plaintiffs, nor anyone acting on their behalf, have received any response with regard to the foregoing from any of the defendants herein.

IX

The plaintiffs herein have not exhausted the administrative remedy provided by the Alabama School Placement Law for the reason that the remedy there provided is inadequate to provide the relief sought by them in this case. By numerous past decisions in this Circuit, plaintiffs are not required to exhaust administrative remedies which will afford them no relief. Plaintiffs have not exhausted the remedies provided by the Alabama School Placement Law

for the further reason that the defendants, acting pursuant to the terms of that law, have continued to maintain and operate a compulsory biracial school system. The Alabama School Placement Law was passed by the Alabama Legislature in 1955 (Code of Alabama), Title 52, §§ 61(1)—61 (12). Though the Alabama School Placement Law was held to be constitutional on its face in *Shuttlesworth* v. *Birmingham Board of Education,* 162 F. Supp. 372, affirmed 358 U.S. 101, the school placement law has been administered and applied to plaintiffs in such a way as to discriminate against them with respect to their constitutional rights under the due process and equal protection clauses of the Fourteenth Amendment and the due process clause of the Fifth Amendment not to be denied admission to the public schools of Montgomery County, Alabama on the ground of race or color.

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X

Plaintiffs allege that the policy, practice, custom and usage of the defendant Board in requiring the minor plaintiffs and other Negro children similarly situated to attend racially segregated schools in Montgomery County violates rights secured to plaintiffs and others similarly situated by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42, United States Code, Section 1983.

XI

Plaintiffs and those similarly situated have suffered and will continue to suffer irreparable injury and harm caused by the acts of the defendants complained of herein. Plaintiffs have no plain, adequate or complete remedy to redress

these wrongs other than this suit for injunctive relief. Any other remedy would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience to the plaintiffs and those similarly situated.

WHEREFORE, plaintiffs respectfully pray that the Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

1. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to operate a compulsory biracial school system in Montgomery County, Alabama.

2. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based on race or color.

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3. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from making initial assignments of pupils to the public schools of Montgomery County, Alabama on the basis of race or color.

4. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from assigning and/or employing teachers, principals and other professional personnel to the public schools under their jurisdiction on the basis of race or color.

5. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from approving employment contracts, budgets and disbursing funds on the basis of race or color.

6. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from constructing elementary and high schools in Montgomery County, Alabama on the basis of the dual attendance areas based on race or color.

7. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from programming and supporting extra-curricular activities which are limited solely to one or the other of the races.

8. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to make any other distinctions in the operation of the schools under their jurisdiction which are based solely on race or color.

In the alternative, plaintiffs pray that this Court enter a decree directing said defendants to present a complete plan in a period of time to be determined by this Court for the reorganization of the entire school system of Montgomery County, Alabama into a unitary, nonracial system which shall include a plan for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis; the drawing of school zone or attendance

area lines on a nonracial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis; the programming of extra-curricular activities on a nonracial basis and the elimination of any other discrimination in the operation of the school system or curricula which are based solely on race or color.

Plaintiffs pray that if this Court directs said defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending court approval and full and complete implementation of said defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant such other, further and additional or alternative relief as may appear to the court from time to time to be equitable, just and proper.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

EXHIBIT A ANNEXED TO COMPLAINT

April 22, 1964

Montgomery County Board of Education
c/o Mr. Walter McKee, Superintendent
305 South Lawrence Street
Montgomery, Alabama

Dear Sirs:

This office is representing the parents of Negro school-age children who are entitled to attend public schools in Montgomery County, Alabama. These parents are residents of Montgomery County, Alabama and they have retained me to represent them in bringing an end to segregated schools in this County. On behalf of these parents I hereby petition you as members of the Board of Education of Montgomery County, and Mr. McKee as Superintendent, to begin immediately operating the schools under your jurisdiction according to the principles laid down by the U. S. Supreme Court on May 17, 1954 in the case of Brown vs. Board of Education; and we particularly request that you do the following:

(1) Assign pupils to schools under your jurisdiction without regard to their race or color.

(2) Assign principals, teachers and other professional personnel under your jurisdiction without regard to their race or color.

(3) Refrain from promulgating and enforcing a dual school system, a particular school zone line and

school attendance area line on the basis of race or color.

(4) Refrain from assigning Negro students attending Negro schools or predominantly Negro Elementary Schools or predominantly Negro High Schools on the basis of race or color.

(5) Refrain from assigning White students attending White Schools or predominantly White Elementary Schools or predominantly White High Schools on the basis of race and color.

(6) Refrain from constructing elementary or high schools and any other schools on the basis of the needs of each of the two races separately.

(7) Refrain from continuing to make any other distinction in the operation of the schools under your jurisdiction which are based solely on race or color.

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On behalf of said parents, we further request that the Board of Education of Montgomery County come forward with a complete plan immediately for reorganization of the entire dual school system under your jurisdiction into a unitarian nonracial system, which plan should provide for reassignment of the teachers, principals and other professional personnel without regard to race or color; the participation of all students in extra-curricula activities for which they are eligible without regard to race or color and for the elimination of all other distinctions in the operation of public schools under your jurisdiction which are based on race or color.

May we hear from you immediately in connection with this matter.

Yours very truly,

F. D. Gray

FDG/dmd

CCs:

Mr. Harold M. Harris
Mr. Fred Bear
Dr. H. P. Dawson
Mr. George A. Dozier
Dr. W. E. Goodwin
Mrs. Isabelle B. Thomasson
Dr. Robert Parker

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Plaintiffs' Motion for Preliminary Injunction

(Filed May 11, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs, upon the complaint filed in the above cause, move this court for a preliminary injunction, pending the final hearing and determination of this cause to enjoin the defendants, their agents, servants, employees, successors and all persons in active concert and participation with them from continuing to operate a compulsory biracial school system in Montgomery County, Alabama, continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based on race or color, making initial assignments of pupils to the public schools of Montgomery County, Alabama on the basis of race or color, assigning and/or employing teachers, principals and other professional personnel to the public schools under their jurisdiction on the basis of race or color, approving employment contracts and budgets, and from disbursing funds on the basis of race or color, constructing elementary and high

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schools in Montgomery County, Alabama on the basis of the dual attendance areas based on race or color, programming and supporting extra-curricular activities which are

limited solely to one or the other of the races, continuing to make any other distinctions in the operation of the schools under their jurisdiction which are based solely on race or color.

In the alternative, plaintiffs pray that this Court enter a decree directing said defendants to present a complete plan in a period of time to be determined by this Court for the reorganization of the entire school system of Montgomery County, Alabama, into a unitary, nonracial system which shall include a plan for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis; the drawing of school zone or attendance area lines on a nonracial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis; the programming of extra-curricular activities on a nonracial basis and the elimination of any other discrimination in the operation of the school system or curricula which are based solely on race or color.

Plaintiffs pray that if this Court directs said defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending court approval and full and complete implementation of said defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant such other, further and additional or alternative relief as may appear to the court from time to time to be equitable, just and proper.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Order Appointing Amicus Curiae

(Filed May 18, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

It appearing to the Court that this case has been filed as of May 11, 1964, with the Clerk of this Court by the plaintiffs, acting by and through their attorneys, and

It further appearing that the said plaintiffs ask this Court for preliminary and permanent injunctive relief against the Montgomery County Board of Education and its members and the Superintendent of Education of Montgomery County, Alabama;

This Court is of the opinion that the public interests in the administration of justice should be represented in this proceeding and that it will be of assistance to the Court to have the benefit of the views of counsel for the United States as amici curiae, and that this Court is entitled at any time to call upon the law office of the United States to serve in that capacity. It is, therefore, the

ORDER, JUDGMENT and DECREE of this Court that the Honorable Ben Hardeman, United States Attorney for this

district, and the Honorable John Doar, Attorney, Civil Rights Division, Department of Justice, Washington, D. C., and/or any other attorney with the Department of Justice designated by the Honorable Robert Kennedy, Attorney General of the United States, be and each is hereby ap-

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pointed as amicus curiae counsel in this cause, to assist the Court in the speedy and just determination of the issues involved.

Done, this the 18th day of May, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: Arlam Carr, Jr., a minor, by Arlam Carr and Johnnie Carr, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

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6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System?

If so, give full details of your expulsion and explain fully all action taken.

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15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

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23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: Bathsheba L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, her parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

—22—

23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: John W. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

—26—

23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: James G. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor, complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

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6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

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23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: Phillip L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

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6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

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23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Motion to Dismiss

(Filed May 30, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Defendants, separately and severally, and move this Honorable Court to dismiss the complaint and the motion for preliminary injunction as heretofore filed and as grounds therefor sets forth the following, separately and severally:

I

The complaint fails to state a cause of action upon which relief can be granted.

II

The complaint fails to set out sufficient facts to make it a proper class action.

III

The complaint fails to allege legally sufficient efforts by the Plaintiffs to exercise any Constitutional right before bringing this action.

IV

The complaint fails to set out legally sufficient facts to show that the Plaintiffs belong to a class which has made

legal effort to exercise any Constitutional rights and that these rights have been denied them.

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V

The Plaintiffs seek an Order from this Court directing and requiring the Defendants to racially integrate the public school system of Montgomery County without showing a denial of any Constitutional right of an individual pupil or person; therefore, this purported class action is not properly brought.

VI

The complaint does not set out facts which make it a proper class action and Defendants deny all and singular the allegations made by Petitioners that they represent a class too large to be made parties to this cause and demand strict proof thereof.

VII

The Plaintiffs have not been denied any rights nor do they represent a class which has been denied any rights. Plaintiffs have not heretofore individually requested the relief that they now ask this Court to order. It is recognized that the relief requested by Plaintiffs; that is, the transfer from one school to another is properly handled on an individual basis. Plaintiffs, in seeking en blanc injunctive relief without making individual application or request for transfer or for individual assignment, improperly ask this Court to judicially determine and construe various administrative factors. The Plaintiffs, therefore, cannot properly nor legally maintain this purported class action.

VIII

The Defendants do not have an affirmative Constitutional duty to provide integrated education. The Defendants are entitled to an opportunity to pass upon each individual request, which the Plaintiffs have not made, therefore, Plaintiffs cannot properly nor legally maintain this purported class action.

IX

The complaint fails to allege any action taken by these Defendants by which the Plaintiffs were denied any Constitutional right.

HILL, ROBISON AND BELSER
Attorneys for the Defendants

Certificates of Service (omitted in printing)

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Notice of Taking Deposition

(Filed June 3, 1964)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

HON. BEN HARDEMAN, U. S. Attorney
Post Office Building
Montgomery, Alabama

HON. JOHN DOAR, U. S. Attorney
Justice Department
Washington, D. C.

HILL, ROBISON AND BELSER
Attorneys and Counsellors at Law
36 South Perry Street
Montgomery, Alabama

MR. WALTER MCKEE, Superintendent
Montgomery County Schools
305 South Lawrence Street
Montgomery, Alabama

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Please take notice that at 9:00 a.m. on the 9th day of June, 1964, in the Attorneys' Conference Room, Second Floor, Post Office Building, Montgomery, Alabama, the Plaintiffs in the above entitled action will take the deposition of Walter McKee, Superintendent of Schools of Montgomery County, Alabama, upon oral examination pursuant

to Federal Rules of Civil Procedure before Mrs. Dorothy Jackson, a Notary Public, or some other officer authorized by law to administer oaths.

Please take further notice that Walter McKee is hereby required to produce upon such examination all papers, records, books and other documentary evidence showing the following:

1. Names and addresses of all white and Negro schools in Montgomery County, Alabama.

2. School districts in Montgomery County, Alabama for white children-Negro children.

3. Money spent in Montgomery County, Alabama for white schools-Negro schools.

4. Names and addresses of all students attending schools—white and Negro, showing which school each attends.

5. Names and addresses of all principals, teachers and other professional personnel, showing their race and what schools they are assigned to.

6. Budgets for Negro and white schools.

7. Copies of all correspondence passing between said Board and any of the attorneys for the plaintiffs.

8. Names, addresses and race of each student who has been transferred from one school in Montgomery County to another school in said County showing the name of the schools from which and to which the students were transferred.

9. The construction of schools based on race.

10. The number of school buses assigned to each school, white and Negro.

11. All other records of said Board which in any way pertains to or will reflect the operation and maintenance of a bi-racial school system in Montgomery County, Alabama.

12. Copies of all petitions filed with Montgomery County Board of Education requesting desegregation of schools in said County, and copies of all documents showing action taken by said board to desegregate schools in said County since May, 1954.

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The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Done, this the 3rd day of June, 1964.

FRED D. GRAY
JACK GREENBERG
CHARLES JONES, JR.
Attorneys for Plaintiffs

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Motion to Stay Deposition

(Filed June 5, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Comes now Walter McKee, one of the Defendants in the above entitled cause and moves that the deposition as scheduled by the Plaintiffs be stayed and continued until a date set and determined by the Court, subsequent to June 10, 1964, and as grounds for said motion, sets down and assigns the following separately and severally:

I

This Defendant, on May 26, 1964, propounded interrogatories addressed to each of the Plaintiffs in this case. These interrogatories elicit information from Plaintiffs as to their status, as said status affects the propriety of these Plaintiffs maintaining the purported class action, which is the basis of this suit. These said interrogatories, as filed by this Defendant, are required to be answered on or before June 10, 1964, and as yet have not been answered. Plaintiffs, in the notice served on this Defendant on June 4, 1964, have set and scheduled the aforementioned deposition of this Defendant for June 9, 1964.

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II

This Defendant, on May 30, 1964, filed a motion to dismiss the complaint as heretofore filed and which said motion attacks the complair t as being an improper class action

in that Plaintiffs do not show nor allege that they are properly members of the class they seek to represent.

III

This Defendant, therefore, prior to the notice of deposition, as served upon him by Plaintiff, requested discovery which goes to the propriety of the action itself and to the Plaintiffs' standing before this Court.

IV

Many of the allegations as contained in Plaintiffs' complaint are general, vague and uncertain and the answers to the interrogatories, as propounded by this Defendant, are necessary in order for him to properly know what specific act or action he is called upon to defend.

V

Orderly procedure and proper disposition of the matter before the Court require that the Plaintiffs properly identify themselves and establish their standing before the Court prior to a detailed discovery proceeding involving the general matters as requested to be furnished in the subpoena for deposition as heretofore served on this Defendant.

THEREFORE, THE PREMISES CONSIDERED, Defendant moves this Honorable Court to continue and to stay the deposition as heretofore requested by the Plaintiffs from June 9, 1964, to a date as set and determined by the Court subsequent to June 10, 1964, or subsequent to the date on which the Plaintiffs answer the interrogatories heretofore filed in this matter and served on them.

HILL, ROBISON AND BELSER
Attorneys for Defendant, Walter McKee

Certificates of Service (omitted in printing)

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Order Denying Motion to Stay Deposition

(Filed June 5, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

There is now presented to this Court the motion of Walter McKee, one of the defendants in this case, wherein he seeks to have this Court stay the taking of the deposition as scheduled by the plaintiffs for June 9, 1964. The basis for the motion is that the defendant on May 26, 1964, propounded interrogatories addressed to each of the plaintiffs in this case and that these interrogatories should be answered prior to the time the deposition of the defendant McKee is taken for the reason that the interrogatories are designed to elicit from plaintiffs information relative to their right to maintain this class action.

From a study of the complaint in this case, the interrogatories propounded by the defendant to the plaintiffs, and the motion of the defendant McKee now presented, this Court is of the opinion that the motion is due to be denied. It appears from a study of the interrogatories that the defendant through the use of interrogatories seeks to elicit information from the plaintiffs concerning their exhausting or failing to exhaust their administrative remedies prior to filing this lawsuit. It is basic in these cases that there is no necessity to exhaust administrative remedies prior to resorting to the courts.

In consideration of the foregoing and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the defendant Walter McKee, filed herein on

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June 5, 1964, seeking to have this Court stay the taking of his deposition by attorneys for the plaintiffs from the scheduled date of June 9, 1964, be and the same is hereby denied.

Done, this the 5th day of June, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Johnnie Carr, one of the parents and next friends of Arlam Carr, Jr., makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Johnnie Carr, the minor plaintiff's name is Arlam Carr, Jr., he was born January 8, 1951 and resides at 720 South Hall Street.

(b) His parents, Arlam Carr and Johnnie Carr.

(c) Same as (b) above.

2. Over thirteen years.

3. Yes.

4. (a) Alabama State Laboratory High School.

(b) 915 South Jackson.

(c) Eighth.

5. Not applicable.

6. Seventh.

7. Alabama State Laboratory High School.

8. 720 South Hall Street.

9. No.

10. Not applicable.

11. No.

12. Not applicable.

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13. I am attaching copies of report cards for the last four years. These are the only ones available.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. Alabama State Laboratory High School.

20. Yes.

21 Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of

the requests are attached to and made part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Ninth.

26. Houston Hills Junior High School or Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

MRS. JOHNNIE CARR

(Sworn to June 10, 1964.)

Certificate of Service (omitted in printing).

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REPORT OF PUPIL PROGRESS

MONTGOMERY PUBLIC SCHOOLS

MONTGOMERY, ALABAMA

Ala. State College Lab. SCHOOL

NAME Arlam Carr

GRADE Fifth YEAR 19 6 0 19 6 1

TO PARENTS:

In giving an estimate of your child's progress we are using a combination of grades and written comments when necessary. In doing this we are attempting to give you a clearer picture of his progress not only in his studies but in the development of certain habits and attitudes which greatly influence his character.

A report of your child's progress will be sent to you at the end of each six weeks. If you desire further information concerning your child you are urged to confer with the teacher at a time when she is not busy with her class.

You are cordially invited to visit the school at any time.

PRINCIPAL

TEACHER

PRINCIPAL

TEACHER

ASSIGNED TO 4th GRADE FOR 9 196

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Pupil's Name Arlene Carr

School _____ Date Entered _____

School _____ Date Entered _____

TOTAL DAYS PRESENT	29	27	26	33	25	32
TOTAL DAYS ABSENT	0	0	0	0	0	0
TOTAL DAYS TARDY	0	0	0		0	0

CODE FOR GRADING:

A Exceptional Progress
B Commendable Progress
C Fair Progress
D Minimum Progress
F Failure

DESIRABLE HABITS AND ATTITUDES:

Effort	B	B	B	B	B	B
Self Control	B	B	B	B	B	B
Accepts and Fulfills Responsibilities	B	B	B	B	B	B
Is Careful In Use of Materials	B	B	B	B	B	B
Work Habits	B	B	O	B	B	B
Follows Directions	B	B	B	B	B	B

CREATIVE AND APPRECIATIVE ACTIVITIES:

Participation in Art Activities	C+	B	B	B	B	B
Participation in Music Activities						
Participation in Physical Education Activities						

READING:

Readiness	B	B	B	B	B	B
Understands What He Reads	B	B	B	B	B	B
Reads Well Orally	B	A	A	A	A	A
Shows Growth in Word Analysis	B	B	B	B	B	B
Reads a Variety of Material	B	B	B	B	B	B

ARITHMETIC:

Knows Number Facts on Grade Level	B	B	B	B	F	D
Works Examples on Grade Level	B	B	B	B	E	D
Solves Problems on Grade Level	B	B	B	D	B	D
Uses Careful and Correct Methods of Work	B	B	B	B	E	B

HANDWRITING	C	B	B	D	E	B

LANGUAGE:

Uses Well Selected Content	C+	B	B	B	F	B
Speaks Clearly and Correctly	C+	B	B	B		B
Uses Correct Form in Written Work	C+	B	B	B		D
Shows Growth in Vocabulary	B	B	B	B	E	B

SPELLING:

Uses Correct Spelling in Written Work	B	B	B	B	F	D
Spells Correctly Words on Spelling List	A	A	A	A		A
Uses Dictionary	B	B	B	B		B

SOCIAL STUDIES (This includes the study of Geography, History, Science and Health):

Acquires Information	B	B	B	B		D
Uses Reference Materials	C	C	B	B		D
Participates in Discussion	B	B	B	B		B
Participates in Planning and Evaluating	B	B	B	B	E	B

Parent's Signature and Comments:

1. (Mrs) J.R. Carr,
2. (Mrs) J.R. Carr
3. (Mrs) J.R. Carr
4. (Mrs) J.R. Carr
5. (Mrs) J.R. Carr
6.

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REPORT OF PUPIL PROGRESS

MONTGOMERY PUBLIC SCHOOLS

Montgomery, Alabama

Alabama State College SCHOOL

NAME Arlam Carr

GRADE 6 YEAR 19 61 19 62

TO PARENTS:

A report of your child's progress will be sent to you at the end of each six weeks.

Parents wishing to talk with teachers about their children will please call the school to arrange an appointment with the teacher. Conferences are usually held from 3 to 3:30 P.M.

You are cordially invited to visit the school at any time.

Mr. W. H. Caston PRINCIPAL

Mattie L. Pulchist TEACHER

_____ PRINCIPAL

_____ TEACHER

ASSIGNED TO 7th GRADE FOR 19 62 19 63

Pupil's Name Arlam Carr

School Ala. State College Date Entered 9/7/61

School _____ Date Entered _____

TOTAL DAYS PRESENT	27	28	30	30	30	30
TOTAL DAYS ABSENT	0	0	0	0	0	0
TOTAL DAYS TARDY	0	0	0	0	0	0

CODE FOR GRADING:
A. Excellent
B. Good
C. Fair
D. Poor
F. Failing

EFFORT	B	A	A	A	A-	A-
CONDUCT	B	A-	A-	B	B	B
ARITHMETIC	B	B	A-	A-	B	A-
LANGUAGE	B	B	A-	A	A-	A-
READING						
Readiness (First Grade)						
Oral	A	B	B	A	B	B
Understanding	B	B	A-	A-		A-
SCIENCE	B	B	B	B	B	B
SOCIAL STUDIES	B	B	B	B	B	B
SPELLING	B	A-	A	A	A	A-
WRITING	B	B	B	A	B	B
HEALTH, PHYSICAL EDUCATION	B	B	B	B		B
MUSIC	B	A-	A-	A	A	A

TEACHER'S COMMENTS: (Please date)

Parent's Signature and Comments:

1. (Mrs) J. R. Carr
2. Mrs J. R. Carr
3. Mrs J. R. Carr
4. (Mrs) J. R. Carr
5. (Mrs) J. R. Carr
6.

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ALABAMA STATE COLLEGE LABORATORY HIGH SCHOOL
ACADEMIC REPORT

7th GRADE

This is a report of the work done by: Carr, Arlam

Course	1st. 9 Wks.	1st. Sem.	Pts.	3rd. 9 Wks.	2nd. Sem.	Pts.
1. Music	A	A		A	A	
2. Art	A-	A		C	B-	
3. Lib. Orien	C	B		B	B	
4. Phy. Ed.	B	C		B	B	
5. English	C	C		B	B+	
6. Math	B	B		C	C+	
Spare	C	C		C	C+	
S. Studies	B	B		B	A	

A = 15 Points
B = 10 Points
C = 5 Points
D = 0 Points
F = -5 Points repeat
I = Incomplete

Points Computed 1st. and 2nd. Semester

This is to certify that I have seen this Report:

Signature Mrs. Arlam Carr
1st 9 Weeks Mrs. Arlam Carr
1st Semester Mrs. Arlam Carr
3rd 9 Weeks Mrs. Arlam Carr
2nd Semester
Home Room Teacher Mrs. Phillips
Principal W. H. Councill

This report comes to you four times during the school year. Each time it is received please examine it carefully, sign, and return it promptly.

Encourage your child by commendation for good marks. Growth in the categories listed on the progress report will result in good marks.

Feel free to consult Teacher and Principal at school about the work of your child.

CERTIFICATE OF PROMOTION

This is to certify that the Pupil named above has completed the work as outlined for 7th grade and is hereby promoted to the 8th grade.

_____ Principal

Given this _____ day of _____, 19____

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ALABAMA STATE COLLEGE LABORATORY HIGH SCHOOL
ACADEMIC REPORT

8th GRADE

This is a report of the work done by: Carr, Arlam Jr.

Course	1st. 9 Wks.	1st. Sem.	Pts.	3rd. 9 Wks.	2nd. Sem.	Pts.
1. Art		B	10	B+	A	—
2. Music	A	A	10	B-	A	—
3. Science	C	C+	5	C	C	5
4. Math	A	B	15	B+	A	15
5. English	C+	A-	15	A	B	10
6. Geography	C+	C+	5	B	B	10
Phy. ED.	B	B+	10	B	A	—
L. O.	B	B	10	C	B	—
			70			40

A = 15 Points
B = 10 Points
C = 5 Points
D = 0 Points
F = -5 Points repeat
I = Incomplete

Points Computed 1st. and 2nd. Semester

This is to certify that I have seen this Report:

Signature Mrs Johnnie R Carr
1st 9 Weeks Mrs Johnnie R Carr
1st Semester Mrs Johnnie R Carr
3rd 9 Weeks Mrs Johnnie R Carr
2nd Semester

Home Room Teacher Mrs. Brown
Principal Dr. A. A. Robinson

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This report comes to you four times during the school year. Each time it is received please examine it carefully, sign, and return it promptly.

Encourage your child by commendation for good marks. Growth in the categories listed on the progress report will result in good marks.

Feel free to consult Teacher and Principal at school about the work of your child.

CERTIFICATE OF PROMOTION

This is to certify that the Pupil named above has completed the work as outlined for 8th grade and is hereby promoted to the 9th grade.

Dr. J. K. Robinson Principal

Given this 29th day of May, 1964

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Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of James G. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Bishop S. Thompson, the minor plaintiff James G. Thompson, was born December 1, 1947 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) His parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. Yes.

4. (a) Alabama State Laboratory High School.

(b) 915 South Jackson.

(c) Tenth.

5. Not applicable.

6. One.

7. Alabama State Laboratory High School.

8. 664 Elmwood Street, Montgomery, Alabama.

9. No.

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10. Not applicable.

11. No.

12. Not applicable.

13. Report Cards are not available at this time but will be made available, if necessary at a later date.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. Alabama State Laboratory High School.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Eleventh.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964)

Certificate of Service (omitted in printing)

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of John W. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Bishop S. Thompson, the minor plaintiff, John W. Thompson was born November 30, 1956 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) His parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. Yes.

4. Mc David Elementary School.

(b) Hardaway Street.

(c) First.

5. Not applicable.

6. None.

7. Not applicable.

8. Not applicable.

9. No.

10. Not applicable.

11. No.

12. Not applicable.

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13. Report cards are not available at this time but will be made available if necessary at a later date.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. McDavid Elementary School.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the Complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Second.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964)

Certificate of Service (omitted in printing)

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of Phillip L. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a). My name is Bishop S. Thompson, the minor plaintiff was born December 7, 1949 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) His parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. Yes.

4. (a) Booker T. Washington Junior High School.

(b) 517 South Union Street, Montgomery, Alabama.

(c) Eighth.

5. Not applicable.

6. One.

7. Booker T. Washington Junior High School.

8. 664 Elmwood Street, Montgomery, Alabama.

9. No.

10. Not applicable.

11. No.

12. Not applicable.

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13. Reports cards are not available, but will be made available if necessary at a later date.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. Booker T. Washington Junior High School.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Ninth.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964)

Certificate of Service (omitted in printing)

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of Bathsheba L. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Bishop S. Thompson, the minor plaintiff was born July 24, 1958 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) Her parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. No.

4. Not applicable.

5. (a) None.

(b) Not applicable.

(c) Not applicable.

6. None.

7. None.

8. Not applicable.

9. Not applicable.

10. Not applicable.

11. Not applicable.

12. Not applicable.

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13. Not applicable.

14. Not applicable.

15. Not applicable.

16. Not applicable.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. Not applicable.

19. Not applicable.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Not applicable.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964.)

Certificate of Service (omitted in printing).

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Order Denying Motion to Dismiss

(Filed June 30, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motion to dismiss filed herein on May 30, 1964, by the defendants. Upon consideration of said motion and each ground set out therein, it is the ORDER, JUDGMENT and DECREE of this Court that said motion be and the same is hereby denied.

It is further ORDERED that this cause be set for a hearing on the plaintiffs' motion for a preliminary injunction commencing at 9:30 a.m., July 29, 1964.

Done, this the 30th day of June, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Answer to the Complaint

(Filed July 8, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Defendants, Montgomery County Board of Education, Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson and Dr. Robert Parker and Walter McKee, file the following answer to the complaint. The paragraph numbers correspond to the paragraph numbers in the complaint.

I

The Defendants deny that the averments of the complaint state sufficient facts to invoke the jurisdiction of this Court under either 28 U.S.C., Section 1343(3), or 42 U.S.C., Section 1893 as alleged.

II

The alleged purposes of the complaint are admitted but the Defendants say that the complaint does not set forth any facts upon which the relief sought can be granted.

Defendants deny the right of each Plaintiff to maintain this suit or to any relief prayed.

III

The Defendants have no sufficient personal knowledge as to the facts averred in this paragraph and demand strict proof.

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IV

The Defendants have no sufficient personal knowledge as to the facts averred in this paragraph and demand strict proof.

V

The averments of this paragraph are denied except that it is admitted Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Mrs. Isabelle B. Thomasson and Dr. Robert Parker are members of the Montgomery County Board of Education and Walter McKee is Superintendent of Education of Montgomery County, Alabama.

VI

Defendants deny the averments of the first sentence of paragraph VI of the complaint. Defendants admit they are operating schools which have been in the past and are now attended by members of the white race and negro race separately. They deny that the operation of separate schools for whites and negroes is under "color of the laws of Alabama." The schools are operated pursuant to the law and in such a fashion as to promote and carry out the purpose of the education of the individual children involved and in accordance with the choice and preference of the great majority of the parents, pupils and citizens of both races.

Except as above stated, the averments of facts in this paragraph are denied.

VII

The Defendants are without knowledge of any written request on behalf of these Plaintiffs and deny that any request on behalf of any of these Plaintiffs or on behalf of any individual child or parent of the class they purport to represent has been made to the Defendants in accordance with the laws of Alabama and the rules and regulations of the Board. The written communication, dated April 22, 1964, attached to the complaint, marked Exhibit "A" is not legally cognizable by the Board.

All other facts alleged in paragraph VII of the complaint are denied.

VIII

The Defendants deny the averments of paragraph VIII of the complaint.

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IX

The Defendants admit that the Plaintiffs have failed and refused to exercise their administrative and judicial remedies provided by the laws of Alabama.

All other facts alleged in paragraph IX of the complaint are denied.

X

The Defendants deny the averments of paragraph X.

XI

The Defendants deny the averments of paragraph XI.

XII

The Defendants, separately and severally having answered the complaint and each and every paragraph thereof; the Defendants as a further defense offer the following:

That no negro pupil or child or parent or guardian of a negro child or pupil has ever applied to the Defendants under the Alabama Pupil Placement Law, Act No. 367, General and Local Acts of Alabama 1957, Page 482, for admission to a school attended by white children; that both the negro race and white race, including pupils and teachers, have voluntarily maintained their attendance in schools of their respective race in Montgomery County, Alabama; that under these facts the Defendants are under no duty or burden to integrate the schools system.

HILL, ROBISON AND BELSER
Attorneys for Defendants

Certificate of Service (omitted in printing).

Request for Admission Under Rule 36

(Filed July 9, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs request Defendants within ten days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be imposed at the trial that each of the following statements are true.

1. The Defendants for some time have pursued and are now pursuing a policy, practice, custom, or usage of operating a dual school system of education in Montgomery County, Alabama, based on race and color.

2. There is no Public School in Montgomery County, Alabama, which is attended both by children commonly designated as "White" and by children commonly designated as "Negro".

3. There is no Public School in Montgomery County, Alabama, which is attended by "White" children and which is staffed in whole or in part by "Negro" principals, teachers, or other professional personnel.

4. There is no Public School in Montgomery County, Alabama, which is attended by "Negro" children and which

is staffed in whole or in part by "White" principals, teachers, or other professional personnel.

5. The assignments of students to Public Schools of Montgomery County, Alabama, are made on the basis of race or color, or on the basis of "zones", which zones in turn are drawn on the basis of race and color.

6. The assignments of principals, teachers, and other professional personnel to the Public Schools of Montgomery County, Alabama, are made on the basis of race and color.

7. The "feeder" system, by which students are advanced from elementary schools to high schools, as employed by the Defendants in the Public Schools of Montgomery County, Alabama, is based on distinctions of race and color.

8. A "Negro" child, initially assigned to an elementary school with other "Negro" children, is thereafter, in each and every such case, assigned to a high school which is comprised only of "Negro" children.

9. Considerations of race and color have figured prominently in the disbursement of school funds for maintenance, operation and construction, in Montgomery County, Alabama.

10. Construction of schools in Montgomery County, Alabama, has been planned with the intention of preserving the racial separateness heretofore enumerated.

11. Extra-curricular activities of an intra and inter-mural sort have been limited to participation by children designated either as "White" or as "Negro", separately and exclusively.

12. A "White" child, initially assigned to an elementary school with other "White" children, is thereafter, in each and every such case, assigned to a high school which is comprised only of "White" children.

FRED D. GRAY
Attorney for Plaintiffs

Certificate of Service (omitted in printing).

Motion for Production of Documents for Inspection and Copying

(Filed July 9, 1964.)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Plaintiffs, by and through their Attorneys of Record and move this Honorable Court for an Order requiring the defendants to produce and to permit plaintiffs to inspect and to copy each of the following documents:

(1) Minutes of all meetings of the Montgomery County Board of Education from January 1, 1954 to date.

(2) Copies of all Annual Reports and any and all other documents compiled by the Montgomery County Board of Education and sent to the Alabama State Board of Education for each year from 1954 to date.

(3) Copies or samples of all forms and like papers supplied by the Alabama State Board of Education to the Montgomery County Board of Education to facilitate reports and the supply of information to the State Board.

(4) Copies of all maps and other descriptions, verbal and diagramatic, showing the school districts and "feeder" plans for access to the Junior High and High Schools, throughout Montgomery County, Alabama, from 1954 to date.

(5) All records involving the kind and cost of school construction throughout Montgomery County, Alabama, since 1954.

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(6) All attendance records of schools operated by the Montgomery County Board of Education from 1954 to the present.

(7) All school bus and other school transportation records of the Montgomery County Board of Education from 1954 to the present.

(8) All records involving intra-county school transfers of students in Montgomery County, Alabama, from 1954 to the present.

(9) All other documents connected with the administration and operation of the schools of Montgomery County, Alabama since 1954, on which there appear designations of race or color.

Defendants have the possession, custody or control of each of the foregoing documents. Each of these documents constitute or contains evidence relevant and material to a matter involved in this action, as is more fully shown in the Affidavit hereto attached.

Respectfully submitted,

FRED D. GRAY
Attorney for Plaintiffs

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

AFFIDAVIT IN SUPPORT OF MOTION

Fred D. Gray, being first duly sworn says:

1. That defendants Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson and Dr. Robert Parker, as members of the Montgomery County Board of Education, and Walter McKee, as Superintendent of Education of Montgomery County, Alabama, are charged by law with responsibility of the administration and supervision of the public schools of Montgomery County, Alabama, which responsibility involves the direction and supervision of, and participation in, the preparation, custody and control of the documents designated in the motion to which this affidavit is attached.

2. (a) The documents designated in the motion to which this affidavit is attached are germane to the subject matter of the action, that being the operation of a dual school system in Montgomery County, Alabama, based wholly on the race and color of the children attending the schools in that County.

(b) Inspection of the designated documents may abbreviate lengthy examination of witnesses at the trial.

(c) The designated documents probably constitute or contain material evidence.

FRED D. GRAY

(Sworn to July 9, 1964.)

Certificate of Service (omitted in printing).

Notice to Produce Documents and Things for Inspection and Copying

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

Hill, Robison & Belser
36 South Perry Street
Montgomery, Alabama

Hon. Ben Hardeman
U. S. District Attorney
Federal Building
Montgomery, Alabama

Please take notice that the undersigned will bring the above Motion on for hearing before the United States District Court for the Middle District of Alabama at the Post Office Building at Montgomery, Alabama, on the 13th day of July, 1964, at 3:30 o'clock in the afternoon or as soon thereafter as counsel can be heard.

FRED D. GRAY
Attorney For Plaintiffs

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Order Directing Production of Documents for Inspection and Copying

(Filed July 16, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motion of the plaintiffs filed herein on July 9, 1964, seeking to have this Court order and direct the defendants, and each of them, to produce and permit plaintiffs to inspect and copy certain enumerated documents, including minutes of all meetings from January 1, 1954, to date, copies of all annual reports and other documents compiled by the Montgomery County Board of Education and sent to the Alabama State Board of Education from 1954 to date, copies or samples of all forms and like papers supplied by the State Board to the Montgomery Board to facilitate reports and the supply of information to the State Board, copies of maps and other descriptions showing the school districts and "feeder" plans for access to the junior high and high schools in Montgomery County from 1954 to date, records of the kind and cost of school construction in Montgomery County since 1954, attendance records of schools operated by the Montgomery Board from 1954 to date, school bus and other school transportation records from 1954 to present, records involving intracounty school transfers of students in Montgomery County from 1954 to date, and all other documents connected with the adminis-

tration and operation of the schools of Montgomery County from 1954 to date.

Upon consideration of said motion and for good cause,

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it is the ORDER, JUDGMENT and DECREE of this Court that said motion be and the same is hereby granted. The defendants, and each of them, are ORDERED and DIRECTED to produce for inspection and copying by plaintiffs and/or plaintiffs' attorneys, each of the items and documents enumerated in plaintiffs' motion, said motion having been filed herein on July 9, 1964. It is further ORDERED that said documents be produced in the office of the Superintendent of Education of Montgomery County, Alabama, for inspection and copying by plaintiffs and/or plaintiffs' attorneys.

Done, this the 16th day of July, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Motion for Leave to File Amendment to Complaint

(Filed July 17, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs and move this Court for leave to file the annexed amendment to the complaint in the above entitled action, on the ground that facts, events and circumstances so require, in that:

1. Bishop S. Thompson, Sr., an adult party Plaintiff, is a Methodist Minister whose recent transfer in that capacity has placed him and his family outside of the jurisdiction of this Court and beyond the direct effect of the administration of the public schools of Montgomery County, Alabama.

2. The persons whose names are to be added as parties Plaintiff fairly and adequately represent the interests of the class on whose behalf this action is brought. Infant and adult Plaintiffs are Negro citizens of the United States and of the State of Alabama and are presently

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residing in Montgomery County, Alabama. The minor Plaintiffs are either attending public schools in Montgomery County, Alabama—managed, controlled and operated by Defendants herein—or are eligible to attend such schools.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Order Granting Leave to File Amendment to Complaint

(Filed July 17, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs having moved this Court for leave to file an Amendment to the Complaint in the above styled action and the Court having considered said Motion and the grounds therein alleged, and the Amendment thereto annexed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Leave to File Amendment to Complaint be and is hereby GRANTED.

DONE this 17th day of July, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Amendment to Complaint

(Filed July 17, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs in the above entitled cause and amend the complaint heretofore filed as follows:

1. By striking out the names of BATHSHEBA L. THOMPSON, JOHN W. THOMPSON, JAMES G. THOMPSON, and PHILLIP L. THOMPSON, minors, by BISHOP S. THOMPSON, SR., and LOIS E. THOMPSON, their parents and next friends, as parties plaintiff.

2. By adding the names of CHARLES LEE BELL, a minor, by CHARLIE BELL and EMMA M. BELL, his parents and next friends; WILLIAM H. DAY, a minor, by HELEN B. DAY, his mother and next friend; JOSEPHINE MARTIN, a minor, by NETTIE MARTIN, her mother and next friend; JOAN MASTIN, a minor, by FRANK MASTIN and PEARLINE MASTIN, her parents and next friends; CONSTANCE SMITH, a minor by JOHNNIE SMITH and BERTHA SMITH, her parents and next friends; and MAE CAROLYN THOMAS, a minor, by LEE C. THOMAS and SOPHIA L. THOMAS, her parents and next friends, as parties plaintiff.

3. By substituting the names added for the names stricken in each and every instance where those stricken appear in the pleadings.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

Acceptance of Service (omitted in printing)

Certificate of Service (omitted in printing)

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Answer to Request for Admissions

(Filed July 17, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants and in answer to the Plaintiffs' request for admissions, heretofore on the 10th day of July served in the above matter, say:

I

In response to the request that Defendants admit the truth of Statement "1." in request for admissions, Defendants do admit they are operating schools which have been in the past and are now attended by members of the white race and Negro race separately; that said schools are operated pursuant to the law in such a fashion as to promote and carry out the purpose of the education of the individual children involved and in accordance with the choice and preference of the great majority of parents, pupils and

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citizens of both races.

II

The truth of Statement "2." in request for admissions is admitted.

III

The truth of Statement "3." in request for admissions is admitted.

IV

The truth of Statement "4." in request for admissions is admitted.

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V

In response to the request that Defendants admit the truth of Statement "5." in request for admissions, Defendants say that assignments of students to the public schools of Montgomery County, Alabama, are made in accordance with the Laws of this State and said assignments are in accordance with the choice and preference of the great majority of parents, pupils and citizens of both races.

VI

In response to the request that Defendants admit the truth of Statement "6." in request for admissions, Defendants say many factors are involved in the selection and assignment of personnel for the Public School System of Montgomery County; that the decisions on assignments and employment is not made by only these Defendants and that assignments are in accordance with the choice and preference of the great majority of principals, teachers and other professional personnel.

VII

In response to the request that Defendants admit the truth of Statement "7." in request for admissions, Defendants say all public schools in Montgomery County are operated pursuant to the Laws of Alabama and in such a fashion as to promote and carry out the purpose of the education of the individual children involved and in accordance with the choice and preference of the great majority of the parents, pupils and citizens of both races.

VIII

In response to the request that Defendants admit the truth of Statement "8." in request for admissions, Defendants make the same response as in I above.

IX

The truth of Statement "9." in request for admissions is denied.

X

In response to the request that Defendants admit the truth of Statement "10." in request for admissions, Defendants say construction of schools in Montgomery County has been and is based on needs, the growth of Montgomery, best use of land, availability of finances, and parent and pupil preferences.

XI

In response to the request that Defendants admit the truth of Statement "11." in request for admissions, Defendants do admit extracurricular activities of an intra and inter mural sort have been participated in by members of the white race and Negro race separately and exclusively.

XII

In response to the request that Defendants admit the truth of Statement "12." in request for admissions, Defendants make the same response as in VIII above.

HILL, ROBISON AND BELSER
Attorneys for Defendants

(Sworn to July 17, 1964)

Certificate of Service (omitted in printing)

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Memorandum Opinion

(Filed July 31, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the plaintiffs' motion for a preliminary injunction. Upon consideration of the evidence, consisting of requests for admissions and responses thereto, interrogatories and answers thereto, the deposition of the Montgomery County Superintendent of Education, Walter McKee, and the several exhibits thereto, and the oral testimony of the various witnesses, together with the several exhibits to that testimony, this Court now makes the appropriate findings of fact and conclusions of law, embodying the same in this memorandum opinion.

This is a proceeding authorized by § 1343, Title 28, U.S.C.A., and § 1983, Title 42, U.S.C.A., brought by the

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several plaintiffs, who are Negro children suing through their parents as next friends, against the Board of Education of Montgomery County, Alabama, its individual members, agents, representatives, employees, and successors in office, and against the Superintendent of Education of Montgomery County, Alabama. Plaintiffs ask this Court to enjoin the defendants and each of them from continuing the policy, practice, custom, and usage of maintaining and operating a compulsory biracial school system in Montgomery County, Alabama, and from assigning students, teachers and other school personnel on the basis of race. Upon the filing of this action on May 11, 1964, by the plain-

tiffs, for themselves and on behalf of other members of their class, this Court by formal order made and entered in this case on May 18, 1964, designated the United States of America as amicus curiae.

From the evidence in this case, this Court now finds that these plaintiffs are Negro children living and residing in various areas of Montgomery County, Alabama; that plaintiffs are authorized by law to bring and maintain this action, and that these plaintiffs represent a class within the meaning of Rule 23(a)(3) of the Federal Rules of Civil Procedure and are, therefore, authorized to sue on behalf of other members of that class since there are common questions of fact arising out of circumstances that are common to these plaintiffs and the other members of their class. *Potts* v. *Flax*, 313 F. 2d 284 (5th Cir. 1963); *Brunson* v. *Board of Trustees of School Dist. No. 1*, 311 F. 2d 107 (4th Cir. 1962), cert. den. 373 U.S. 933 (1963).

This Court further finds that these plaintiffs and the other members of their class who are similarly situated have been and are currently attending the public schools in Montgomery County, Alabama, or expect to commence attendance in said public school system during the 1964-65 school year; that the individual defendants Harold M. Harris, as Chairman, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson, and Dr. Robert Parker are the members composing the Montgomery County Board of Education, and Walter McKee is the Superintendent of Education of Montgomery County, Alabama; and that these individuals actively manage, control and operate the public school system throughout Mont-

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gomery County, Alabama. This school system, as operated, is a unified city-county system with no separate city school districts and no City Board of Education. There is only

one school district for Montgomery County, Alabama, with the County Board of Education and the Superintendent of Education of Montgomery County, Alabama, exercising complete control over the entire system. In this school system for the school year 1963-64, there were in attendance approximately 15,000 Negro children and approximately 25,000 white children. In this system the Montgomery County Board of Education owns and operates approximately 77 schools.

From the evidence in this case, this Court further specifically finds that, through policy, custom and practice, the Montgomery County Board of Education, functioning at the present time through the named individual defendants, operates a dual school system based upon race and color; that is to say, that, through this policy, practice and custom, these officials operate one set of schools to be attended exclusively by Negro students and one set of schools to be attended exclusively by white students. The evidence further reflects that the teachers are assigned according to race; Negro teachers assigned only to schools attended by Negro students and white teachers are assigned only to schools attended by white students.

This Court further finds that the students using the transportation facilities; that is, the school buses, are segregated according to race. Furthermore, transportation is furnished by the defendants for Negroes only to schools attended solely by Negro students and for white students only to schools attended solely by white students.

The several exhibits in this case reflect that, in what has been set up by these defendants as "attendance areas," particularly in the City of Montgomery, Alabama, certain such areas are designated for "colored" and others are designated for "white." From the manner in which these area

lines are drawn, there are schools designated for and solely attended by white students that are in closer proximity to the homes of Negro students than are the schools designated for the Negro students. The reverse is true with reference to white students. The assignments of students to public

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schools (elementary, junior high and high) in Montgomery County, Alabama, have been, and are presently, being made on the basis of race or color. This is being done through the use of these "attendance areas" or "district zones," which areas are, according to the maps introduced into evidence in this case, very obviously drawn on the basis of race and color. Segregation of the races is also being accomplished in this public school system through the assignment of principals, teachers and other professional personnel. The "feeder system" is used in the Montgomery County school system; this is a system by which students are advanced from elementary schools through junior high schools and on to the high schools. This "feeder system" has been set up, is based, and is presently operating on distinctions of race and color. For instance, Negro children who are initially assigned to an elementary school attended solely by other Negro children are thereafter, in each and every instance as reflected by the evidence in this case, assigned to junior high schools and subsequently to senior high schools which are attended solely by Negro children. The reverse is true for white children. Furthermore, strong considerations of race have figured in the disbursement of school funds for maintenance, operation and construction in the Montgomery County school system. Even the substitute teachers list and attendance records reflect these distinctions based upon race.

This Court now specifically finds and concludes that, because of the designation of certain schools to be used

solely by Negro students and the designation of other schools to be used solely by white students, because of the assignment of teachers and the manner in which the teachers are assigned, because of the transportation facilities that are made available to students and the manner in which said facilities are used, and upon an abundance of other evidence as submitted in this case, some of which has been hereinabove referred to, the operation of the Montgomery County school system by these defendants is on a compulsory biracial basis. The operation of this school system on a compulsory biracial basis by these defendants is in their official capacity; thus, such an operation is action under color of the laws of the State of Alabama. The operation of the Montgomery County school

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system in such a manner is, under the law, discriminatory as to these plaintiffs and other members of their race and class who are similarly situated.

This Court specifically finds that the operation of the Montgomery County school system by and through these defendants, and the manner in which it has been and is presently being operated, is in violation of the law of the United States. *Brown* v. *Board of Education,* 347 U.S. 483 (1954); *Brown* v. *Board of Education,* 349 U.S. 294 (1955); *McNeese* v. *Board of Education,* 373 U.S. 668 (June 1963); *Goss* v. *Board of Education,* 373 U.S. 683 (June 1963); *Watson* v. *Memphis,* 373 U.S. 526 (May 1963); *Gibson* v. *Board of Public Instruction of Dade County,* 246 F. 2d 913 (5th Cir. 1957); *Gibson* v. *Board of Public Instruction, Dade County, Fla.,* 272 F. 2d 763 (5th Cir. 1959); *Holland* v. *Board of Public Instruction,* 258 F. 2d 730 (5th Cir. 1958); *Mannings* v. *Board of Public Instruction,* 277 F. 2d 370 (5th Cir. 1960); *Augustus* v. *Board of Public Instruction,* 306 F. 2d 862 (5th Cir.

1962); *Bush* v. *Orleans Parish School Board,* 308 F. 2d 491 (5th Cir. 1962); *Armstrong* v. *Board of Education of the City of Birmingham, Ala.,* 323 F. 2d 333 (5th Cir., July 1963); *Lee* v. *Macon County Board of Education,* 221 F. Supp. 297 (M.D. Ala., August 1963); *Lee* v. *Macon County Board of Education,* —— F. Supp. —— (M.D. Ala., July 1964), and *Armstrong* v. *Board of Education of the City of Birmingham, Ala.,* —— F. 2d —— (5th Cir., June 1964).

This Court further finds that, since the Supreme Court spoke in *Brown* v. *Board of Education,* supra, in 1954, the only step taken by the Montgomery County Board of Education to comply with that court decision is that "mechanics were set up" in 1956 to use the Alabama School Placement Law in the assignment of students.[1] The "mechanics" for the use of the Alabama School Placement Law as set up by the Montgomery County Board of Education have not resulted in the transfer of any Negro students to white schools or of any white students to

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Negro schools in the entire system. Thus, this Court finds the conclusion inescapable that the Montgomery County Board of Education has made and is presently making assignments and transfers of students on the basis of race notwithstanding the provisions of the Alabama School Placement Law.

The facts in this case further show that the defendant board of education in this case has not performed and is not performing its clear legal duty of taking affirmative steps to provide and operate a desegregated educational

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[1] Title 52, Chapter 4A, Code of Alabama. Also see *Shuttlesworth* v. *Birmingham Board of Education,* 162 F. Supp. 372 (N.D. Ala. 1958), aff'd. 358 U.S. 101, and this Court's opinion in *Lee* v. *Macon County Board of Education* (July 1964), supra.

system in Montgomery County, Alabama. The duty on the part of such a board in this respect, as set out in *Armstrong* v. *Board of Education of the City of Birmingham, Ala.* (July 1963), supra, is:

> "The burden of initiating desegregation does not rest on Negro children or parents or on whites, but on the School Board."

In this case, these plaintiffs are seeking the relief that was sought ten years ago by the plaintiffs in *Brown* v. *Board of Education,* supra. The evidence in this case reflects that they are entitled to that relief. That relief, generally, is to desegregate, within a reasonable time and in as orderly a manner as possible, a school system being operated in Montgomery County, Alabama, which is operated in violation of the laws of this country. The evidence in this case does not reflect any justification or basis for a continuation of this segregated school system that is continuously violating the constitutional rights of these plaintiffs and the members of their class. Accordingly, the Montgomery County Board of Education, and the individual members thereof, and Walter McKee as Superintendent of Education of Montgomery County, Alabama, will be restrained, by this Court's issuance of a preliminary injunction, from the continuation of such a system.

This Court is of the further opinion, and now concludes, that the defendants in this case should, immediately upon receipt of this order, take the necessary steps to desegregate the public schools in the Montgomery County school system to such an extent as will meet the minimum requirements specifically set forth by the Fifth Circuit Court of Appeals in *Armstrong* v. *Board of Edu-*

cation of the City of Birmingham, Ala. (June 1964), supra. In this connection, see also *Calhoun* v. *Latimer*, —— U.S. —— (May 1964) and *Griffin* v. *County School Board of Prince Edward County*, —— U.S. —— (May 1964).

This means that, commencing with the opening of the schools in the Montgomery County school system in September 1964, the first, tenth, eleventh, and twelfth grades must be desegregated. This desegregation for these grades may be through the use of the Alabama School Placement Law after the giving of timely and appropriate public notice that it will be used for this purpose throughout the entire school system in Montgomery County, Alabama, commencing in September 1964. This notice shall be by advertisement in one of the daily newspapers circulated throughout Montgomery County, Alabama, and shall be addressed to the students, parents, teachers, and other appropriate school personnel. Such notice shall be calculated to inform all concerned of their right under the plan, and said publication shall be for at least twice per week for two weeks. The acceptance of applications for transfer shall be in the office of the Montgomery County Board of Education, Montgomery, Alabama, or at some other suitable place or places publicly designated by the Board of Education; said applications for transfer to the grades specified shall be accepted from the date of the filing of this Court's opinion and order to and including August 14, 1964.

The requirements herein outlined are considered by this Court to be the minimum requirements. *Calhoun* v. *Latimer* (May 1964), supra; *Griffin* v. *County School Board of Prince Edward County* (May 1964), supra, and *Arm-*

strong v. *Board of Education of the City of Birmingham, Ala.* (June 1964), supra.

The Montgomery County Board of Education will be further ordered to file with this Court on or before January 15, 1965, its detailed plan for the operation of the Montgomery County school system commencing with the 1965-66 school year; such plan is to include and provide for the desegregation of the entire school system in Montgomery County, Alabama, within a time and in such a manner as to meet the constitutional requirements.

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This Court specifically retains jurisdiction of this cause.

Done, this the 31st day of July, 1964.

/s/ FRANK M. JOHNSON, JR.
United States District Judge

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Decree

(Filed July 31, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the memorandum opinion of this Court made and entered herein on this date, it is the ORDER, JUDGMENT and DECREE of this Court that the Montgomery County Board of Education, Harold M. Harris, as Chairman, and Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson, and Dr. Robert Parker, as members of the Montgomery County Board of Education, and Walter McKee, as Superintendent of Education of Montgomery County, Alabama, together with their agents, servants and employees, successors in office, and all those who are or may hereafter be in active concert or participation with them, be and they are hereby enjoined, pending the disposition of this case upon its merits, from:

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(1) Operating or permitting the operation of the public schools and the public school system of Montgomery County, Alabama, on a racially segregated basis except in strict accordance with the opinions and decrees of this Court;

(2) Failing to provide public school education for the plaintiffs and other members of their class in a school

or schools that are not operated on a racially segregated basis;

(3) Failing to make an immediate start, to be effective for the school term commencing in September 1964, in the desegregation of the first, tenth, eleventh, and twelfth grades in the public schools of Montgomery County, Alabama, through the use of the Alabama School Placement Law, without discrimination on the basis of race or color, and

(4) Failing to take such additional steps in the elimination of racial discrimination in the public schools of Montgomery County, Alabama, for the 1965-66 school year as may be required by any desegregation plan approved by this Court.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Montgomery County Board of Education, Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson, and Dr. Robert Parker, as members thereof, and Walter McKee, as Superintendent of Education of Montgomery County, Alabama, together with their agents, servants and employees, successors in office, and all those who are or may hereafter be acting in concert or participation with them, immediately upon receipt of this order set up the necessary and appropriate machinery for accepting and processing applications for assignment or transfer for the school year 1964-65 from applicants for the first, tenth, eleventh, and twelfth grades seeking to attend schools heretofore attended only by a race other than that of the applicants; said applications shall be taken by Montgomery County Board of Education officials up to and through Friday, August 14, 1964, and each of said applications shall be filed in the office of the Superintendent of Educa-

tion for Montgomery County, Alabama, on forms to be supplied by the office of the Superintendent of Education for Montgomery County, Alabama, upon request, to the

parents or guardians of the pupils for whom such applications are to be made.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Superintendent of Education for Montgomery County, Alabama, notify the parents or guardians of the applicants for such transfers before September 1, 1964, of his action upon such applications for transfer or assignment.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Superintendent of Education of Montgomery County, Alabama, shall direct publication in a daily newspaper published in the City of Montgomery, Alabama, twice each week for the weeks beginning August 2 and 9, 1964, of the following notice:

NOTICE TO PARENTS, PUPILS AND TEACHERS IN THE MONTGOMERY COUNTY PUBLIC SCHOOL SYSTEM. This notice is given pursuant to the order of the United States District Court for the Middle District of Alabama in Civil Action No. 2072-N:

You are hereby notified that, pursuant to the order of the United States District Court for the Middle District of Alabama, the Board of Education for Montgomery County, Alabama, will accept and consider applications for assignment or transfer to schools heretofore attended only by pupils of a race other than that of the applicants in the first, tenth, eleventh, and twelfth grades for the school year commencing in September 1964.

All applications for such assignments or transfers must be filed in the office of the Superintendent of Education at Montgomery, Alabama, on or before Friday, August 14, 1964.

All such applications must be filed on forms obtained from the office of the Superintendent of Education for Montgomery County, Alabama, by the parents or guardians of the pupils for whom such applications are to be made and must be completed and signed by the respective parents or guardians of such pupils.

All applications filed within the time and in the manner stated will be processed and determined without discrimination as to race of the applicants, and the parents or guardians of the applicants will be notified before September 1, 1964, of the action taken on the applications so filed.

It is further ORDERED that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education report to this Court in writing on or before 9:00 a.m., September 1, 1964, as to the action taken by the Montgomery

County Board of Education on each application for transfer and/or assignment pursuant to this order.

It is further ORDERED that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education, or their successors in office, file with this Court on or before January 15, 1965, their detailed plan for the operation of the Montgomery County school system commencing with the 1965-66 school year; such plan to be designed to eliminate segregation of students based upon

race and the complete elimination of the biracial school system within a reasonable time.

It is further ORDERED that jurisdiction of this cause be and the same is hereby specifically retained.

Done, this the 31st day of July, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Writ of Injunction

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To the above-named defendants and each of them:

TAKE NOTICE that you and each of you, your agents, representatives, employees, successors in office, and those who are or may hereafter be in active concert and participation with you and who shall receive notice of this order, be and you are hereby enjoined as more particularly set out in the memorandum opinion and the decree of this Court made and entered herein on this date, a copy of each of which is attached hereto.

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This writ of injunction is issued pursuant to the memorandum opinion and the decree of this Honorable Court made and filed with the Clerk of this Court on this the 31st day of July, 1964.

Done, this the 31st day of July, 1964.

R. C. DOBSON
Clerk of the United States
District Court for the
Middle District of Alabama

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Defendants' Report Dated September 1, 1964

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants in the above styled cause and file the following report, all in compliance with that portion of the Decree and Order of this Court made and entered on July 31, 1964, ordering said Defendants to "report to this Court in writing on or before 9:00 A.M., September 1, 1964, as to the action taken by the Montgomery County Board of Education on each application for transfer and/or assignment pursuant to this Order":

A total of twenty-nine applications for transfer and/or assignment were received by the Board on or before 5:00 P.M., August 14, 1964. These twenty-nine applications were processed by the Board through the use of the Alabama School Placement Law, without discrimination on the basis of race or color.

All applicants are listed alphabetically with their addresses, the grade and school to which they applied, and the action taken by the Board on each application.

Name	Address	Grade and School to Which Applied	Action Taken
Bell, Charles Lee	2032 Early St.	12th grade-Lanier	Denied
Bell, Herbert	184 John Morris	1st grade-Harrison	Approved
Campbell, Alfonso	708 Davidson St.	1st grade-Goode St.	Denied
Davis, Willie Mae	2132 Council St.	10th grade-Lanier	Denied
Day, William Henry	785 Thurmond St.	12th grade-Lanier	Denied
Floyd, Alfonso	311 No. Jackson St.	10th grade-Lanier	Denied
Floyd, Charles	311 No. Jackson St.	10th grade-Lanier	Denied
Gray, Vanessa Lynn	2722 W. Edgemont	1st grade-Bellingrath	Denied
Harris, Ella Louise	180 Martin Patton	10th grade-Lanier	Denied
Lawrence, Freddie, Jr.	210 John Morrison	1st grade-Harrison	Denied
Martin, Josephine	933 So. Decatur St.	12th grade-Lanier	Denied
Martin, Shirley Ann	354 Auburn St.	12th grade-Lanier	Approved
Mastin, Joanne	726 Alexander St.	10th grade-Lanier	Denied
Miles, Wayne Edward	199 John Morris	1st grade-Harrison	Approved
Miles, Yvonne	199 John Morris	10th grade-Lanier	Denied
Persons, Syrinthia R.	1518 Yougene St.	11th grade-Lee	Denied
Riggins, Annie Joyce	1804 Fourney St.	11th grade-Lee	Approved
Riggins, Willie, Jr.	1804 Fourney St.	12th grade-Lee	Approved
Russell, Robert Earl	13B Mulzer Blvd.	11th grade-Lanier	Approved
Sanders, Jo Ann	1839 Fourney St.	1st grade-Capitol Hgts.	Denied
Sanders, Julia Mae	1839 Fourney St.	12th grade-Lee	Approved
Sanders, Susie Bell	375 Auburn St.	10th grade-Lanier	Approved
Sanders, William Berry	1838 Fourney St.	10th grade-Lee	Denied
Smith, Constance	1510 Westcott St.	11th grade-Lanier	Denied
Stovall, Zack, Jr.	128 Martin Patton	10th grade-Lanier	Denied
Thomas, Joyce Lorraine	2161 Dorothy St.	12th grade-Lanier	Denied
Thomas, Mae Carolyn	1411 Deer St.	10th grade-Lanier	Denied
Webb, Anthony R.	567 Watts St.	1st grade-Capitol Hgts.	Denied
White, Linda Diana	2344 Day St.	10th grade-Lanier	Denied

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SUBMITTED this 1st day of September, 1964.

HILL, ROBISON AND BELS
Attorneys for Defendan

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Motion for Further Relief or Order to Show Cause

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the plaintiffs, by and through their attorneys of record, and represent to this Court the following:

1. That on July 31, 1964, this Court rendered a decree requiring the defendant, Montgomery County Board of Education, and the individual defendants named therein, "their agents, servants, and employees, successors in office, and all those who will or may hereafter be acting in concert or participation with them, immediately upon receipt of this order set up the necessary and appropriate machinery for accepting and processing applications for assignment or transfer for the school year 1964-1965 from applicants for the first, tenth, eleventh and twelfth grades seeking to attend schools heretofore attended only by a race other than that of the applicants; . . ."

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2. That pursuant to further directions of the Court, within the time specified in this Court's decree, the applicants named below applied for transfer or assignment to the respective grades and schools opposite their names:

To Sidney Lanier High School

Yvonne Miles	Tenth Grade
Charles Bell	Twelfth Grade
Willie Mae Davis	Tenth Grade
William H. Day	Twelfth Grade
Alfonso Floyd	Tenth Grade
Charles Floyd	Tenth Grade
Ella Louise Harris	Tenth Grade
Shirley A. Martin	Twelfth Grade
Josephine Martin	Twelfth Grade
Joan Mastin	Tenth Grade
Susie B. Sanders	Tenth Grade
Constance Y. Smith	Eleventh Grade
Zack Stovall, Jr.	Tenth Grade
Joyce L. Thomas	Twelfth Grade
Mae Carolyn Thomas	Tenth Grade
Linda D. White	Tenth Grade
Robert Russell	Eleventh Grade

To Robert E. Lee High School

Syrinthia R. Person	Eleventh Grade
Annie Joyce Riggins	Eleventh Grade
Willie Riggins, Jr.	Twelfth Grade
William B. Sanders	Tenth Grade
Julia M. Sanders	Twelfth Grade

To Bellingrath Elementary School

Vanessa Lynn Gray	First Grade

To Goode Street Elementary School

Alphonso Campbell	First Grade

To Capital Heights Elementary School

JoAnn Sanders	First Grade
Anthony R. Webb	First Grade

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To William R. Harrison Elementary School

Herbert Bell	First Grade
Freddie Lawrence	First Grade
Wayne Miles	First Grade

3. That defendant, Montgomery County Board of Education, has considered the applications of the above named pupils for transfer or assignment to the schools designated, but has rejected the applications of all except the following:

To Sidney Lanier High School

Susie Bell Sanders	Tenth Grade
Robert Russell	Eleventh Grade
Shirley Ann Martin	Twelfth Grade

To Robert E. Lee High School

Willie Riggins, Jr.	Twelfth Grade
Annie Joyce Riggins	Eleventh Grade
Julia Mae Sanders	Twelfth Grade

To Harrison Elementary School

Wayne Edward Miles	First Grade
Herbert Bell	First Grade

4. That the defendants have denied the applications for transfer of each and every plaintiff in this action.

5. That the schools to which the above named applicants sought transfer and assignment are better equipped, better staffed and have broader curriculums and in general are better schools than the colored schools which applicants have heretofore attended or will be compelled to attend.

6. In refusing to accept the applications of the other named pupils, defendants have failed to state any reason for such refusal or to elucidate any standards which form the basis for their judgment.

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7. The defendants in failing to approve the other applications seek to only have token desegregation in the public schools of Montgomery County and to circumvent this Court's decree in this case and in the case of *Brown* v. *Board of Education*, 347 U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686.

8. That in processing and refusing to approve the applications for transfer and assignment, the defendants have subjected these Negro pupils to procedures and investigations which white children desiring to transfer from one white school to another are not subjected to, and to procedures and investigations which other Negro children desiring to transfer from one Negro school to another Negro school are not subjected to.

9. That in refusing to approve the applications for transfer and assignment the defendants have denied to plaintiffs and their class their constitutional right to receive an education on a nondiscriminatory basis.

10. The plain meaning of the Court's decree in the above case is that the volume of transfers within the grades indicated was to be expanded rather than constricted. This is made clear by consideration of several factors leading to this Court's judgment. First, this Court relies upon the opinions of the Supreme Court in *Griffin* v. *County School Board of Prince Edward County*, 12 L. Ed. 2d 256 (1964) and *Calhoun* v. *Latimer*, 12 L. Ed. 2d 288 (1964), which when taken together indicate that the only appropriate relief in effecting desegregation is that which is "quick and effective," and the decision of the Fifth Circuit, *Armstrong* v. *Board of Education of the City of Birmingham*, 323 F. 2d 333 (5th Cir., June 18, 1964); cf. *Glynn Co. Board of Education, et al.* v. *Lynda Sue Gipson*, —— F. 2d —— (5th Cir., June 18, 1964), which delineate the minimal requirements for compliance with the Supreme Court's mandates, and upon which the decree in the instant case is modeled. Secondly, because the decree is an apparent retreat from this Court's earlier opinion in *Lee, et al.* v. *Macon County School Board*, 221 F. Supp. 297, and its later opinion in *Harris, et al.* v. *Bullock County Board of Education*, C. A. No. 2073-N, 8/5/64, neither of which limited transfers to four grades, the strong inference is that total desegregation of the Montgomery County school system was to be effected within these grades in the school term beginning September, 1964. Clearly, the limitation upon transfers effected by the defendants' action violates both the plain meaning and the spirit of this Court's decree.

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WHEREFORE, plaintiffs pray that this Court order the applicants, namely, Yvonne Miles, Charles Bell, Willie Mae Davis, William H. Day, Alfonso Floyd, Charles Floyd,

Ella Louise Harris, Josephine Martin, Joan Mastin, Constance Y. Smith, Zack Stovall, Jr., Joyce L. Thomas, Mae Carolyn Thomas, Linda D. White, Syrinthia R. Person, William B. Sanders, Vanessa Lynn Gray, Anthony R. Webb and Freddie Lawrence to be admitted to the grades and schools listed, or in the alternative, that the defendants be made to show cause why each application for transfer should not be promptly granted.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES
Attorneys for Plaintiffs

Certificate of Service (omitted in printing)

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MONTGOMERY PUBLIC SCHOOLS

MONTGOMERY, ALABAMA

REPORT OF PUPIL PROGRESS

For the Year 19 63 19 64

G. W. Carver JUNIOR HIGH SCHOOL

Sanders, Susie PUPIL

To Parents or Guardians:

This report indicates the progress in studies and in citizenship made by the pupil during each six-week period of the school year. Please discuss all phases of the report with your son or daughter.

Section 5 Teacher [illegible]

Grade 7

Assigned to Grade 10

SYSTEM OF GRADING

A. Excellent
B. Good
C. Fair
D. Poor
F. Failing

SUBJECT	Six Weeks Periods						Year Aver.
	1st	2nd	3rd	4th	5th	6th	
ALGEBRA	B	A-	B-	A-	B	B	B
ARITHMETIC							
CIVICS	B	C	B	B	A	B	B
ENGLISH	B	B	B	C	C	B	B
GEOGRAPHY							
HISTORY (AMERICAN)							
LATIN							
SCIENCE	B	B	B	A	A	A	A
ART				B	C	C	
HOME MAKING							
MANUAL ARTS							
MUSIC appreciation			C				
SPEECH							
PHYSICAL ED.	A	A					
BAND							
NO. TIMES CHECKED OUT	—						
DAYS ABSENT	0	0	1	0	0	1	2
DAYS TARDY	0	0	0	0	0	0	0

Please acknowledge your inspection of this report by signing it. Your signature does not indicate approval or disapproval of the contents of the report.

CITIZENSHIP PROGRESS

In order that the school may cooperate with the parent to develop in every student a well rounded character and the qualities of good citizenship, progress in certain social habits and attitudes should be given careful attention. Undesirable conduct outside classroom will be referred to the Principal

	EFFORT						CLASSROOM CONDUCT					
	1	2	3	4	5	6	1	2	3	4	5	6
B B	B	B	C	B	B	B	B	B	B	B	B	B
B B	B	C	B	B	A	A	B	B	B	B	B	B
A C	A	A	A	A	A	A	A	A	B	A	A	A
A A	B	B	B	B	A	A	B	B	B	A	A	A
C											A	
			B						A			

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TEACHER'S COMMENTS:

Susie made the honor roll for the 1st reporting period.

Again, Susie made the honor roll for the 2nd period.

4th Period: Susie again made the honor roll. Congratulations.
5th Period: Susie made honor roll again

PARENT'S COMMENTS:

INVITATION TO PARENTS

Parents wishing to talk with teachers about their children will please call the school for an appointment on any school day after 3:00 p.m. except Monday, which is the day set for faculty meetings. Teachers are always pleased to confer with parents.

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MONTGOMERY PUBLIC SCHOOLS

MONTGOMERY, ALABAMA

REPORT OF PUPIL PROGRESS

For the Year 19 63 19 64

GEORGE WASHINGTON CARVER SENIOR HIGH SCHOOL

THOMAS, JOYCE PUPIL

To Parents or Guardians:

This report indicates the progress in studies and in citizenship made by the pupil during each six-week period of the school year. Please discuss all phases of the report with your son or daughter.

With the first report of the year will be sent a letter explaining the system of reporting employed. You are urged to keep this letter and to refer to it at the end of each grade period.

First Semester

Section 8 Teacher Mrs. A. F. Baker

Grade 11

Second Semester

Section 8 Teacher Mrs. A. F. Baker

Grade 11

Promoted to 12th Grade
5/29/64 ASB

SCHOLASTIC PROGRESS

The scholastic advancement of the student is indicated by the five steps listed below:

A. Exceptional Progress
B. Commendable Progress
C. Fair Progress
D. Minimum Progress
F. Failure

FIRST SEMESTER	STEPS				
Subjects	First Per.	Second Per.	Third Per.	Exam. Grade	Sem. Record
English	A	A	A	B	A
American History	B	B	C	C	C
Art	B	B	A	B	B
French II	A	C	B	C	C
Physics	B	A	A	C	B
Days Absent	0	0	0		0
Times Tardy	0	0	0		0
Times Checked Out					

SECOND SEMESTER	STEPS				
Subjects	First Per.	Second Per.	Third Per.	Exam. Grade	Sem. Record
English	A	A	A	B	A
American History	B	A	C	B	B
Art	A	A	A	B	B
French II	A	A	A	B	B
Physics	A	B	A	A	A
Days Absent	0	0	0		
Times Tardy	0	0	0		
Times Checked Out					

3958023

CITIZENSHIP PROGRESS

In order that the school may cooperate with the parent to develop in every student a well rounded character and the qualities of good citizenship, progress in certain social habits and attitudes should be given careful attention.

Progress in any of the desirable traits listed below is indicated in the following manner: If no mark is placed after the trait, the student is to be considered satisfactory in that respect. If the student has shown either marked progress or decided need for improvement in any particular trait, the fact will be indicated by the same steps as those used for scholastic progress.

CITIZENSHIP CHARACTERISTICS	1st Per.	2nd Per.	3rd Per.	4th Per.	5th Per.	6th Per.
Effort						
Co-operation						
Courtesy						
Reliability						
Self-Control						
Care of public property						
General conduct						

Please note that there has been left on the last page of this report a space for further comments by teacher

SIGNATURE OF PARENT

Please acknowledge your inspection of this report by signing it. Your signature does not indicate approval or disapproval of the contents of the report.

First Semester	Second Semester
First Period	First Period
Second Period	Second Period
Third Period	Third Period

TEACHER'S COMMENTS:

(An additional sheet or separate letter will be used when necessary.)

PARENT'S COMMENTS:

INVITATION TO PARENTS

Parents wishing to talk with teachers about their children will please call the school to arrange an appointment with the teacher. Conferences are usually held from 3 to 3:30 P.M.

Name of Pupil [illegible] Teresa, Ida Carolyn Address 1411 Dean Street

Last Name	First	Middle	Present Address	Place and Date of Birth	Sex
[illegible]	[illegible]	[illegible]	1411 Dean Street	2/13/49 Montgomery	M F
[illegible]	Ida	Clarence	City, Ala.	Living: Yes / No	Citizen: Yes / No
[illegible]	Sandra	L.	Occupation		Education: Elem. / H. S. / Col.

Test Record

Date	Name of Test	Total Score	Per. Rank	Chr. Age

Attendance Record

Year	Class	Days in Session 1st Sem.	Days in Session 2nd Sem.	Days Present 1st Sem.	Days Present 2nd Sem.	Times Tardy 1st Sem.	Times Tardy 2nd Sem.

Scholastic Record

Junior High School Subjects	Year	Weeks Pursued	Minutes Per Week	Marks 1st Sem.	Marks 2nd Sem.
[illegible] Year 1961-62		36	45		
[illegible]				A	A
[illegible]				A	A
[illegible]				B	B
[illegible]				B+	B+
[illegible]				C	C
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible] Year 1962-63		36	45		
[illegible]				B+	B
[illegible]				B	B
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible] Year 1963-64		36	45		
[illegible]				B+	B
[illegible]				A	A
[illegible]				A	A
[illegible]				A-	B
[illegible]				A	A
[illegible]				A-	B
[illegible]				A	A
[illegible]					

High School Subjects	Year	Weeks Pursued	Minutes Per Week	Marks 1st Sem.	Marks 2nd Sem.	Credit
[illegible]						
[illegible]						
[illegible]						

(Duly 1, 1959)
Education Association, Montgomery, Ala.

CUMULATIVE RECORD AND TRANSFER BLANK

Name of Pupil

Last Name	First	Middle	Home Address	Place and Date of Birth	Sex
Smith	Constance		1520 Wescott Montgomery, Ala.	B/9/48 Montgomery	M F
Smith	Johnny		Occupation Insurance Agent	Living: Yes X, No	Citizen: Yes X, No	Education: Elem. , H. S. , Col.
Smith	Bertha		Occupation Beautician	Living: Yes X, No	Citizen: Yes X, No	Education: Elem. , H. S. , Col.

Test Record

Date Mo.	Date Yr.	Name of Test	Point Score	Per. Rank	Chr. Age	

Attendance Record

Year	Class	Days in Session 1st Sem.	Days in Session 2nd Sem.	Days Present 1st Sem.	Days Present 2nd Sem.	Times Tardy 1st Sem.	Times Tardy 2nd Sem.

Scholarship Record

JUNIOR HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.
or I Year 1960-61		36	45		
glish				A	A
cial Studies				A	A
thematics				A	A
ience				C	C
sical Education				C	C
				B	A
sic				A	A
brary Orientation				A	C
or II Year 1961-62		36	45		
glish				C	B-
ography				B-	B
thematics				B	A
ience				A-	B
sical Education					A
				A	B
sic				A	
brary Orientation				A	A
or III Year 1962-63		36	45		
glish				C	B
ience				B	B
gebra I				B	C
				B	B
sic				A	A
th I				B	B
me Economics I				B	B

SENIOR HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.	UNITS
English		36	45			
Senior I 1963-64				A-	B	1
Social Studies		36	45			
World History 1963-64				B	A	1
Science		36	45			
Biology 1963-64				B	B	1
Mathematics		36	45			
Algebra II 1963-64				B-	B	1
Foreign Language						
Vocational or other subjects		36	45			
Physical Education 1963-64				B	B	1/3

A=Excellent B=Good C=Fair D=Poor (Passing) F=Failure I=Incomplete W=Withdrawn

Graduated Number of Pupils in Graduating Class Quarter Rank in Class: Highest Second Third Lowest

of High School Ala. State College Laboratory High Address of School Montgomery, Alabama

dited by Southern Association Colleges & Secondary Schools

Registrar
Principal
Superintendent

d sent to Date 9/11/64

Address

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ME OF PUPIL Smith, Constance

Residence Record

Year	Mailing Address	Tel. No.	DISTANCE Bus	DISTANCE School
	1510 Westcott Street			

Schools Attended

NAME OF SCHOOL	Administered privately, by County, City	DATE Entered	DATE Left
Ala. State College Lab.		9/54	

Year	Class	EXTRA-CURRICULAR ACTIVITIES

OUTSIDE INTERESTS AND HOBBIES

Sewing
Cooking

Year	Class	VOCATIONAL PREFERENCE
		Scientist

HEALTH RECORD

Ht.	Wt.	Physical Defects

of other Children in Family—Older Younger Church Affiliation or Preference Nationality

ancial Status of Family—Owns Home Rents Yearly Income

PERSONALITY RATING

	JR. I					JR. II					JR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
iative															
stworthiness															
dership Ability															
al Attitude															
otional Control															

	SR. I					SR. II					SR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
iative															
stworthiness															
dership Ability															
al Attitude															
otional Control															

EMPLOYMENT RECORD

Year	Kind of Work	Employer	DATES From	DATES To	Wages Per

CUMULATIVE RECORD AND TRANSFER BLANK

Last Name	First	Middle	Home Address	Place and Date of Birth	Sex
Bell	Charles	L. Jr.	2032 Early Street, Montgomery, Ala.	1/14/49 Montgomery	M F
Father: Bell	Charles	L.	Occupation: Utility Salesman	Living: Yes X, No	Citizen: Yes X, No	Education: Elem. X, H. S., Col.
Mother: Bell	Zerna	M.	Occupation: Teacher	Living: Yes X, No	Citizen: Yes X, No	Education: Elem., H. S., Col. X

Name of Pupil

Address

Test Record

Date Day	Date Yr.	Name of Test	Point Score	Per. Rank	Chr. Age	Year	Class
		NAME OF PUPIL BELL CHARLES L	09	13	14	17	17
		NAME OF PUPIL BELL CHARLES L	18	24	23	22	16

Attendance Record

Days in Session 1st Sem.	Days in Session 2nd Sem.	Days Present 1st Sem.	Days Present 2nd Sem.	Times Tardy 1st Sem.	Times Tardy 2nd Sem.
12	15	56	81	80	83	51	73
21	25	91	81	77	50	79	103

Scholarship Record

JUNIOR HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.
Junior I Year 1959-60		36	45		
ish				C	B
al Studies				B	B
matics				B	A
ce				A	A
ical Education				C	B
				A	B-
e				B	A-
ary Orientation					B
ior II Year 1960-61		36	45		
ish				B	B
raphy				A-	A-
matics				A	A
ce				A	A
ical Education				B	C
				A	A
c				B	A
al Interest				S	S
ary Orientation				A	A
ior III Year 1961-62		36	45		
ish				B	A
ce				A	B
bra I				A	A
ical Education				B	
				B	A-
g				A	A
n I				B	B
orial Arts				B-	B

HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.	UNITS
English		36	45			
Senior I 1962-63				B-	B	1
Senior II 1963-64				B	B	1
Social Studies		36	45			
World History 1962-63				B	B	1
American History 1963-64				B	A	1
Science		36	45			
Biology 1962-63				A	A	1
Physics 1963-64				A	A	1
Mathematics		36	45			
Algebra II 1962-63				A	B	1
Geometry 1963-64				A	A	1
Foreign Language		36	45			
French I 1963-64				B	A	1
Vocational or other subjects		36	45			
Art 1962-63				A	A-	1/2
Physical Education 1962-63				C	B	"
Physical Education 1963-64				A	B	"

A=Excellent B=Good C=Fair D=Poor (Passing) F=Failure I=Incomplete W=Withdrawn

raduated Number of Pupils in Graduating Class Quarter Rank in Class: Highest Second Third Lowest

f High School Ala. State College Laboratory High Address of School Montgomery, Alabama

ited by Southern Association Colleges & Secondary Schools

Registrar
Principal
Superintendent

sent to

Date 9/1/63

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ME OF PUPIL

Residence Record					Schools Attended			
Year	Mailing Address	Tel. No.	DISTANCE		NAME OF SCHOOL	Administered: privately, by County, City	DATE	
			Bus	School			Entered	Left

Year	Class	EXTRA-CURRICULAR ACTIVITIES	OUTSIDE INTERESTS AND HOBBIES

Year	Class	VOCATIONAL PREFERENCE	HEALTH RECORD		
			Ht.	Wt.	Physical Defects

of other Children in Family—Older Younger Church Affiliation or Preference Nationality

ancial Status of Family—Owns Home Rents Yearly Income

PERSONALITY RATING

	JR. I					JR. II					JR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
ative															
stworthiness															
ership Ability															
al Attitude															
otional Control															

	SR. I					SR. II					SR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
lative															
stworthiness															
lership Ability															
al Attitude															
otional Control															

EMPLOYMENT RECORD

Year	Kind of Work	Employer	DATES		Wages Per—
			From	To	

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Order

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the order and decree of this Court made and entered in this case on the 31st day of July, 1964, the Montgomery County Board of Education has reported to this Court in writing concerning the action taken by that Board on each application for transfer and/or assignment made by the parents or guardians of Negro students. This report, as now filed, reflects that a total of 29 applications for transfer and/or assignment were received by the Board during the time ordered by this Court; that the 29 applications were processed by the Board through the use of the Alabama School Placement Law, and that of the 29, 21 of such applications were denied and 8 were granted. The report to this Court, as filed by the Board, does not set out any reasons to support the denial of any of the applications for transfer and/or assignment.

The plaintiffs, by and through their attorneys of record, file with this Court on this date their written objections to the action of the Montgomery County Board of Education in denying the applications for transfer and/or assignment as filed with the Board by 21 parents or guardians of Negro children who, by their applications, requested assignment or transfer to schools heretofore attended only by pupils of the white race. Plaintiffs, further, by their written motion filed on this date, move this Court to order

the defendant Montgomery County Board of Education to show cause why each application for transfer that was made to and denied by said Board should not be granted.

Upon consideration of the motion of the plaintiffs and upon consideration of the written report filed by the Montgomery County Board of Education with this Court on this date, this Court notes that the defendant Board has failed to state any reasons for its refusal to grant the applications for transfer and/or assignment of 21 of the Negro applicants and that said Board has failed to advise this Court concerning any standards or criteria which form the bases for its judgment in each instance where the application for transfer and assignment was denied. This Court is of the opinion that the Montgomery County Board of Education should within a reasonable time file with this Court in writing its reasons for refusing to grant the application for transfer and/or assignment of Charles Lee Bell, Alfonso Campbell, Willie Mae Davis, William Henry Day, Alfonso Floyd, Charles Floyd, Vanessa Lynn Gray, Ella Louise Harris, Freddie Lawrence, Jr., Josephine Martin, Joanne Mastin, Yvonne Miles, Syrinthia R. Persons, Jo Ann Sanders, William Berry Sanders, Constance Smith, Zack Stovall, Jr., Joyce Lorraine Thomas, Mae Carolyn Thomas, Anthony R. Webb, and Linda Diana White, and, further, advise this Court in writing concerning the standards and criteria which form the bases for the Board's denial of each of said applications. The attorneys for the Board of Education advise this Court that it will be convenient for them to file with this Court by 3 p.m. on this date the reasons for the Board's refusal of each of said applications and the standards and criteria which form the bases for its action in each instance.

In consideration of the foregoing and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the plaintiffs filed herein on this date, seeking to have this Court order the transfer and/or assignment of certain Negro students based on applications filed by their parents and/or guardians with the Montgomery County Board of Education, pursuant to the order and decree of this Court of July 31, 1964, be and the same is hereby reserved.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Montgomery County Board of Education file with this Court on or before 3 p.m. on this date its reasons for refusing to grant the applications for transfer and/or assignment of Charles Lee Bell, Alfonso Campbell, Willie Mae Davis, William Henry Day, Alfonso Floyd, Charles Floyd, Vanessa Lynn Gray, Ella Louise Harris, Freddie Lawrence, Jr., Josephine Martin, Joanne Mastin, Yvonne Miles, Syrinthia R. Persons, Jo Ann Sanders, William Berry Sanders, Constance Smith, Zack Stovall, Jr.,

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Joyce Lorraine Thomas, Mae Carolyn Thomas, Anthony R. Webb, and Linda Diana White, and to advise this Court as to the standards and criteria which form the bases for their action as reflected in the report of the Board filed with this Court on this date.

Done, this the 1st day of September, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Defendants' Report

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The Plaintiffs having filed this 1st day of September, 1964, a Motion for Further Relief or Order to Show Cause and this Court having passed on said motion, the Defendants in compliance with the Order of this Court make the following report:

A total of twenty-nine applications for transfer and/or assignment were received by the Board on or before 5:00 P. M., August 14, 1964. These twenty-nine applications were processed by the Board through the use of the Alabama School Placement Law, without discrimination on the basis of race or color.

Attorneys for Plaintiffs have informed the Court and attorneys for Defendants that the applicants, Alfonso Campbell and Jo Ann Sanders have withdrawn their applications and Defendants make no report on these applicants.

All other applicants are listed alphabetically with pertinent information considered by the Defendants in making their decision and the action taken by the Defendants.

1. Charles Lee Bell, 2032 Early Street, Montgomery, Alabama.

The applicant attended Alabama State Laboratory School last year, completing the eleventh grade and applied to attend Lanier High School, requesting admission to the twelfth grade.

Applicant lives approximately eight blocks from Carver High School and approximately seventeen blocks from Lanier. The route to Lanier crosses several busy thoroughfares; whereas a tunnel is provided at Fairview Avenue for the most hazardous street crossing between Early Street and Carver High School.

Lanier High School will be the most overcrowded High School in the County this year as approximately 2,700 pupils are anticipated and the normal capacity at Lanier is approximately 2,000. All regular rooms at Lanier High School will be used each period of the

day and approximately fourteen makeshift rooms have been created at Lanier. These likewise will be in full use.

Lanier will have a higher pupil-teacher ratio than will Carver High School.

The Defendants denied the application of Charles Lee Bell to attend Lanier High School.

2. Herbert Bell, 184 John Morris Avenue, Montgomery, Alabama.

This applicant applied for admission to Harrison Elementary School and brought with his application his birth certificate which shows that he meets the age requirements.

The applicant lives about the same distance from Abraham's Vineyard School as Harrison Elementary School.

The pupil-teacher ratio and available space at Harrison School would not be adversely affected.

The parent and pupil have expressed a preference to attend Harrison Elementary School.

This applicant is admitted to the first grade at Harrison School.

3. Willie Mae Davis, 2132 Council Street, Montgomery, Alabama.

This applicant attended Carver Junior High School last year in the ninth grade. The applicant applied to attend Lanier High School in the tenth grade.

The applicant lives approximately four blocks from Carver High School and approximately twenty-one blocks from Lanier High School.

According to the applicant's score on the California Mental Maturity and Achievement Tests, given all eighth grade students in Alabama, the applicant showed to be about two grades retarded in both achievement and mental ability.

The Defendants considered as additional factors, the overcrowded conditions at Lanier and comparative teacher-pupil ratio, all as more particularly stated in Paragraph "1" above.

The Defendants denied this application.

4. William Henry Day, 785 Thurmond Street, Montgomery, Alabama.

This applicant attended Booker Washington High School last year in the eleventh grade. Applicant ap-

plied to attend Sidney Lanier High School this year in the twelfth grade.

The applicant resides approximately three blocks from Booker Washington High School and approximately fourteen blocks from Lanier High School. The route to Lanier will be more hazardous than the route to Booker Washington High School.

The capacity of Booker Washington High School has been increased by the addition of nine new rooms which will be ready by the opening of school this year.

Lanier High School will be the most overcrowded high school in the County this year with approximately 2,700 pupils attending and the normal capacity of Lanier High School is approximately 2,000. Lanier will have a higher pupil-teacher ratio than will Booker Washington. All regular rooms will be in use, each period of the day along with approximately fourteen makeshift rooms.

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The Defendants denied this application.

5. Alfonso Floyd, 311 North Jackson Street, Montgomery, Alabama.

This applicant attended Houston Hill Junior High School last year in the ninth grade and applied to attend Lanier High School this year in the tenth grade.

This applicant lives approximately eleven blocks from Booker Washington High School and approximately twenty-nine blocks from Lanier High School. The route to Lanier will be more hazardous than the route to Booker Washington.

Lanier High School will be the most overcrowded high school in the County this year with approximately 2,700 pupils attending and the normal capacity of Lanier High School is approximately 2,000. Lanier will have a higher pupil-teacher ratio than will Booker Washington. All regular rooms will be in use, each period of the day along with approximately fourteen makeshift rooms.

The capacity at Booker Washington High School has been greatly increased this year because of an addition of nine rooms which will be ready for the opening of school.

According to this applicant's score on the California Mental Maturity and Achievement Tests given all eighth grade students in Alabama, the applicant is about one grade retarded in mental ability and three grades retarded in achievement.

The Defendants denied this application.

6. Charles Floyd, 311 North Jackson Street, Montgomery, Alabama:

This applicant attended Houston Hill Junior High School last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

This applicant resides approximately eleven blocks from Booker Washington High School and approximately twenty-nine blocks from Lanier High School. The route to Lanier High School crosses several busy thoroughfares and is much more hazardous than the route to Booker Washington High School.

This applicant has an approximate "D" average and had to make up his math in summer school last summer. According to the California Mental Maturity and Achievement Tests given all eighth grade students in Alabama, the applicant shows to be three grades retarded in both achievement and mental ability.

The Defendants considered as additional factors overcrowded conditions at Lanier, additional rooms at Booker Washington High School and comparative teacher-pupil ratio as more particularly shown in Paragraph "5" above.

The Defendants denied this application.

7. Vanessa Lynn Gray, 2722 W. Edgemont Avenue, Montgomery, Alabama.

This applicant applied for admission to the first grade at Bellingrath School.

The applicant resides in the area designated to attend Carver Elementary School. No children living in the vicinity of this applicant attend Bellingrath School.

The applicant lives approximately eight blocks from Carver Elementary School. Because of the fact that W. Edgemont Avenue is not open between the Atlantic Coast Line Railroad and the east side of Genetta

Ditch, it would be approximately twenty-four blocks to Bellingrath. It would be necessary that this pupil travel down Fairview Avenue to Court Street and down Court Street to Bellingrath School.

There will be only one section of the first grade in Bellingrath School while three or four sections for the first grade are scheduled at Carver Elementary

School. The pupil-teacher ratio will be lower at Carver Elementary School than at Bellingrath School.

The Defendants denied this application.

8. Ella Louise Harris, 180 Martin Patton, Montgomery, Alabama.

This applicant attended Hayneville Road Junior High School last year in the ninth grade and made application to attend Lanier High School this year in the tenth grade.

This applicant has a very poor attendance record. The applicant attended Carver Elementary School in 1961-62 and she did not attend school in 1962-63. In the 1963-64 session her attendance was rather poor at Hayneville Road Junior High School.

All Alabama students are given in the eighth grade the Mental Maturity and Achievement Tests. For some reason, this applicant had not taken these tests.

On August 18, 1964, a letter was sent to her father, Mose Harris at 180 Martin Patton, Montgomery, Alabama. Said letter was delivered to Mose Harris by the Attendance Supervisor at 5:31 P. M., on August 18. The letter stated that those students who had failed to take the tests mentioned above would be given an opportunity to take them at 8:45 A. M. on Thursday, August 20. The applicant failed to appear for the tests on Thursday, August 20, but did report on August 21, when the second half of the test was given. A make-up for this applicant was given on August 24, and her I.Q. according to the California Test was 65 and her average achievement was one grade retarded. The applicant's excuse for not reporting on Thursday,

August 20, was, "My father said I wouldn't be able to come Thursday and told me to come Friday".

The home environment of this applicant is considered a factor. According to school personnel the applicant was involved in a shooting last year and was hospitalized for eight days. Apparently neither she nor her family made any report of this incident to the police department of the City of Montgomery.

The Defendants considered the fact that Lanier High School would be the most overcrowded high school in the County this year and that the teacher-pupil ratio at Lanier High School is much higher than the pupil-teacher ratio at Carver High School.

The Defendants denied this application.

9. Freddie Lawrence, Jr., 210 John Morris Avenue, Montgomery, Alabama.

This applicant applied to attend the first grade at Harrison Elementary School this year.

The father of this applicant stated that the applicant would be six years old on September 26, 1964. The father of the applicant was told verbally and it was printed on the application, that birth certificates must accompany the completed applications for pupils applying to enter the first grade. This applicant was the only applicant for the first grade whose parents failed to turn in the birth certificate with the application. All pupils entering the first grade must present a birth certificate showing that they will be six on or

before October 2, in order that they may enter school. This applicant has failed to meet this requirement.

The Defendants denied this application.

10. Josephine Martin, 933 South Decatur Street (Paterson Court) Montgomery, Alabama.

This applicant attended Booker Washington High School last year, in the eleventh grade and applied to attend Sidney Lanier High School this year in the twelfth grade.

This applicant resides approximately two blocks from Booker Washington High School and approximately fourteen blocks from Lanier.

The Defendants considered as additional factors, overcrowded conditions at Lanier, additional rooms at Booker Washington High School and comparative teacher-pupil ratio, all as more particularly shown in Paragraph "5" above.

The Defendants denied this application.

11. Shirley Ann Martin, 354 Auburn Street, Montgomery, Alabama.

This applicant attended Carver High School last year in the eleventh grade and applied this year to attend Sidney Lanier in the twelfth grade.

This applicant lives approximately three blocks from Lanier and approximately ten blocks from Carver High School.

Parent and pupil preference is to attend Lanier.

This applicant is accepted for the twelfth grade at Sidney Lanier High School.

12. Joanne Mast[illegible], 726 Alexander Street, Montgomery, Alabama.

This applicant attended Carver High School last year in the ninth grade and applied this year to attend Sidney Lanier High School in the tenth [illegible].

This applicant resides approximately three blocks from Carver and twelve blocks from Lanier.

According to the California Mental Maturity and Achievement Tests given this applicant and all eighth grade students in Alabama, the applicant shows to be two grades retarded in achievement and about two and a half grades retarded in mental ability.

Defendants considered as additional factors, overcrowded conditions at Lanier and comparative teacher-pupil ratio, all as more particularly stated in Paragraph "1" above.

Defendants denied this application.

13. Wayne Edward Miles, 199 John Morris Avenue, Montgomery, Alabama.

This applicant applied to attend the first grade at Harrison Elementary School.

The applicant brought his birth certificate showing that he meets the age requirements.

The applicant resides in the Abraham's Vineyard School district; however, he lives about the same distance to Harrison Elementary School.

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Parent and pupil preference is to attend Harrison School.

The Defendants approved this application.

14. Yvonne Miles, 199 John Morris Avenue, Montgomery, Alabama.

This applicant attended Hayneville Road Junior High School last year, attending the ninth grade. She is applying this year to attend Sidney Lanier High School in the tenth grade.

The applicant transferred to Hayneville Road Junior High School last year; however, this school system has been unable to get a record of her eighth grade work from New York.

The California Mental Maturity and Achievement Tests are given all eighth grade pupils in Alabama. The Defendants had no test results on this applicant and the mother of the applicant was notified by letter dated August 18, 1964, received by her at 5:13 P. M. on August 18, 1964, requesting that the applicant report on August 20 and 21, to take the test. Through August 24 at 8:45 A. M., the applicant had not reported. About noon August 24, the applicant's mother called the Attendance Supervisor of the Montgomery County School System and stated that the applicant was in New York and would not return until August 29. The applicant has not complied with the testing requirements of the Defendants.

The Defendants considered the additional factors of overcrowded conditions at Lanier and comparative teacher-pupil ratio, all as set forth more particularly in Paragraph "1" above.

The Defendants denied this application.

15. Syrinthia Reshe Persons, 1518 Yougene Street, Montgomery, Alabama.

This applicant attended St. Jude's School last year in the tenth grade and applied this year to attend Lee High School in the eleventh grade.

This applicant lives approximately ten blocks from Booker Washington High School and eighteen blocks from Lee High School. The route to Lee High School crosses several thoroughfares and would be much more

hazardous than the route to Booker Washington High School.

Lee High School is one of the more crowded schools in the County and the pupil-teacher ratio is much higher at Lee High School than at Booker Washington High School. A nine room addition has been completed at Booker Washington High School this summer and will greatly increase its capacity and reduce the pupil-teacher ratio.

On August 13, at 4:45 P. M., a woman came to the office of the Board of Education and stated she was Stella D. Person and asked for an application for Syrinthia Person, 1518 Yougene Street. This woman stated she wanted to apply for her child to attend the first grade at Capitol Heights Elementary School. On being asked the name of the father of the child she stated it was an illegitimate child and that she had never married. At 4:50 P. M., August 14, this application was returned to the Board of Education. The application number was "31". The application, when returned, showed the applicant as having attended St. Jude's School last year in the tenth grade and that the applicant wanted to attend Lee High School in the eleventh grade this year. In the opinion of the Superintendent of Education of Montgomery County who issued the initial application on August 13, and who received the application on August 14, the woman who received the application was not the same as the woman who returned the application. As authorized by the Decree of this Court and as set forth by the public notice given by the Board of Education, the parents

or guardian of the applicant was required to obtain the application. This application was obtained or returned in violation of this requirement.

The Defendants denied this application.

16. Annie Joyce Riggins, 1804 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington High School in the tenth grade last year and applied for admission to Lee High School this year in the eleventh grade.

This applicant lives approximately sixteen blocks from Lee and approximately twenty-eight blocks from Booker Washington High School.

The parent and applicant have expressed a preference to attend Lee High School this year.

The Defendants approved this application.

17. Willie Riggins, Jr., 1804 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington High School last year in the eleventh grade and has applied to attend Lee High School this year in the twelfth grade.

The applicant lives approximately sixteen blocks from Lee and approximately twenty-eight blocks from Booker Washington.

The parent and applicant have expressed a preference to attend Lee High School this semester.

The Defendants approved this application.

18. Robert Earl Russell, 13B Mulzer Boulevard, Montgomery, Alabama.

This applicant attended Carver High School last year in the tenth grade and applied for admission to Lanier High School this year in the eleventh grade.

This applicant resides in Maxwell Heights which is owned by the United States Government in connection with Maxwell Air Force Base. He resides in an area that is transported and the other students in this project attend Lanier High School.

The applicant and the parent have expressed a preference to attend Lanier High School this semester.

The Defendants approved this application.

19. Julia Mae Sanders, 1839 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington High School last year in the eleventh grade and has applied to attend Lee High School this year in the twelfth grade.

The applicant resides sixteen blocks from Lee and approximately twenty-eight blocks from Booker Washington.

The applicant and the parent have expressed a preference to attend Lee High School this year.

The Defendants approved this application.

20. Susie Bell Sanders, 375 Auburn Street, Montgomery, Alabama.

This applicant attended Carver Junior High School

last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

The applicant lives approximately three blocks from Lanier High School and approximately ten blocks from Carver High School.

The applicant and her parents have expressed a preference to attend Lanier High School this year.

The Defendants approved this application.

21. William Berry Sanders, 1839 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School in the ninth grade last year and is applying to attend Lee High School this year in the tenth grade.

This applicant had a "D" average at Booker Washington last year and it was necessary for him to make up one subject in summer school. He has not completed ninth grade mathematics.

The applicant has a score on the California Mental Maturity and Achievement Tests given all eighth grade pupils in Alabama showing about two grades retarded in both achievement and mental ability.

Lee High School will be much more overcrowded this year than Booker Washington and the pupil-teacher ratio will be much lower at Booker Washington High School. Nine additional classrooms were built at Booker Washington this summer which will greatly increase the pupil capacity of this high school and reduce the teacher load.

The Defendants denied this application.

22. Constance Smith, 1510 Westcott Street, Montgomery, Alabama.

This applicant attended Alabama State Laboratory School last year in the tenth grade and has applied to

attend Lanier High School this year in the eleventh grade.

The applicant lives approximately six blocks from Carver High School and approximately eighteen blocks from Lanier High School.

The Defendants considered the additional factors of overcrowded conditions at Lanier and comparative pupil-teacher ratio, all as set forth more particularly in Paragraph "1" above.

The Defendants denied this application.

23. Zack Stovall, Jr., 128 Martin Patton, Montgomery, Alabama.

This applicant attended Houston Hill Junior School last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

According to the California Mental Maturity and Achievement Tests given all eighth grade students in Alabama, this applicant has an I.Q. of about 49 and is four grades retarded in achievement. On the Otis Quick Scoring Test, the applicant is shown to be at 66. According to the eighth grade records at Carver Junior High School where this applicant attended at one time, it was noted that he has failed to complete the last half of his Science and Math which he then failed.

If this applicant attends Carver High School he can do the necessary make-up in the Junior High School area which is offered in an adjacent building while nothing but Senior High School work is offered at Lanier High School.

The Defendants considered the additional factors of overcrowded conditions at Lanier and pupil-teacher

ratio, all as set forth more particularly in Paragraph "1" above.

The Defendants denied this application.

24. Joyce Lorraine Thomas, 2161 Dorothy Street, Montgomery, Alabama.

This applicant attended Carver High School last year in the eleventh grade and applied to attend Sidney Lanier High School this year in the twelfth grade.

The applicant lives approximately eight blocks from Carver High School and approximately nineteen blocks from Lanier High School.

According to the California Mental Maturity and Achievement Tests given all eleventh grade students in Alabama last year the applicant showed to be about two grades retarded in mental ability and one and one-half grades retarded in achievement.

The Defendants considered the additional factors of the overcrowded conditions at Lanier and the comparative teacher-pupil ratio, all as more particularly set forth in Paragraph "1" above.

The Defendants denied this application.

25. Mae Carolyn Thomas, 1411 Deer Street, Montgomery, Alabama.

This applicant attended State Laboratory School last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

The applicant lives five blocks from Booker Washington High School and twelve blocks from Lanier High School.

The Defendants considered the additional factors of overcrowded conditions at Lanier and additional rooms at Booker Washington and comparative pupil-teacher ratio, all as more particularly shown in Paragraph "5" above.

The Defendants denied this application.

26. Anthony R. Webb, 567 Watts Street, Montgomery, Alabama.

This applicant applied to attend Capitol Heights Elementary School in the first grade.

This applicant lives in an area where the students attend McDavid Elementary School. Pupils living in the North end of the McDavid Elementary School area that are closer to Booker Washington Elementary School have been allowed to attend either school since the extra rooms were added at Booker Washington Elementary School.

The applicant is only five blocks from Booker Washington Elementary School and twenty blocks from Capitol Heights Elementary School. The route to Capitol Heights Elementary School from the applicants address crosses several busy thoroughfares and is much more hazardous than the route to Booker Washington Elementary School or McDavid Elementary School.

The Defendants denied this application.

27. Linda Diana White, 2344 Day Street, Montgomery, Alabama.

This applicant attended St. Jude's School in the ninth grade last year and has applied to attend Lanier High School in the tenth grade this year. The applicant lives

approximately twenty-one blocks from Carver High

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School and thirty-five blocks from Lanier High School. The route to Lanier High School crosses several busy thoroughfares whereas a tunnel at Fairview Avenue is provided for the most hazardous street crossing between Day Street and Carver High School.

The applicant does not meet the tenth grade entrance requirements in that she does not have any ninth grade mathematics. In the event the applicant attended Carver High School she could take ninth grade mathematics at the Junior High School in an adjacent building where the Carver Junior High School is located, while there is no Junior High School in the area of Sidney Lanier High School.

Lanier High School will be the most overcrowded high school in the County this year. Approximately 2,700 pupils are anticipated and the normal capacity of Lanier High School is approximately 2,000. Lanier High School uses all of its regular classrooms each period as well as approximately fourteen makeshift rooms. The pupil-teacher ratio at Sidney Lanier High School is much higher than the pupil-teacher ratio at Carver High School.

The Defendants denied this application.

SUBMITTED this 1st day of September, 1964.

HILL, ROBISON AND BELSER
Attorneys for Defendants

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Amendment to Motion for Further Relief or Order to Show Cause

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes the plaintiffs, by and through their attorneys of record, and amend their "Motion For Further Relief or Order To Show Cause", by adding the following new paragraphs following Paragraph No. 10, to be designated and read as follows:

"11. That the defendants in refusing to approve the applications for transfer or assignment of the said pupils have applied different criteria to the above named pupils than were applied to other pupils attending schools in the Montgomery County school system in the same grades as said pupils.

12. That the defendants allege that they have denied the applications of said pupils '. . . through the use of the Alabama School Placement Law . . .'; that according to said law the following matters may be considered:

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Available room and teaching capacity in the various schools; the availability of transportation facilities; the effect of the admission of new pupils upon established or proposed academic programs; the suitability of established curricula for particular pupils; the adequacy of the pupil's academic preparation for admission to a particular school and curriculum; the scholastic apti-

tude and relative intelligence or mental energy or ability of the pupil; the psychological qualification of the pupil for the type of teaching and associations involved; the effect of admission of the pupil upon the academic progress of other students in a particular school or facility thereof; the effect of admission upon prevailing academic standards at a particular school; the psychological effect upon the pupil of attendance at a particular school; the possibility or threat of friction or disorder among pupils or others; the possibility of breaches of the peace or ill will or economic retaliation within the community; the home environment of the pupil; the maintenance or severance of established social and psychological relationships with other pupils and with teachers; the choice and interests of the pupil; the morals, conduct, health and personal standards of the pupil; the request or consent of parents or guardians and the reasons assigned therefor.

That one or more of said factors has no ascertainable standards, is vague and indefinite, and a decision based upon those factors are arbitrary and deny to plaintiffs and the class they represent the equal protection of the law and due process of law.

13. That said factors contained in said Alabama Pupil Placement Law, as applied to plaintiffs and the class they represent, are unconstitutional and, therefore, null and void."

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES
Attorneys for Plaintiffs

Order

(Filed September 5, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the order and decree of this Court made and entered herein on the 31st day of July, 1964, the Montgomery County Board of Education reported to this Court concerning the action taken by that Board on the applications for transfer and/or assignment to schools in the Montgomery County public school system as made by the parents or guardians of Negro students. This report reflects that a total of 29 applications for transfer and/or assignment were received by the Board during the time allowed by the order of this Court; that the 29 applications were processed by the Board through the use of the Alabama School Placement Law, and that of the 29 applications filed, 8 were granted, 2 were withdrawn and the rest were denied. The plaintiffs on September 1, 1964, made written objections to the action of the Montgomery County Board of Education.

Upon consideration of the plaintiffs' objections and the written report as filed by the Board, this Court on September 1, 1964, ordered and directed that the Montgomery County Board of Education file with this Court in writing its reasons for refusing to grant the applications for transfer and/or assignment of the Negro applicants who were denied; the Board was further directed to advise this Court

in writing as to the standards and criteria which formed the bases for the Board's denial of each of said applications.

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Pursuant to the order of this Court of September 1, wherein the Montgomery County Board of Education was directed to advise this Court in writing as to the reasons, standards and criteria the Board considered supported its action, the Board filed with this Court as of September 1, 1964, in writing, the reasons, standards and criteria applied in the case of each of the Negro applicants.

Upon consideration of the objections by plaintiffs to the action of the Montgomery County Board of Education in denying certain of the applications for transfer and/or assignment, upon consideration of plaintiffs' motion seeking to have this Court order that the defendant Montgomery County Board of Education grant each of the applications for transfer and/or assignment as filed by the Negro applicants who were denied, and upon consideration of the response of the Montgomery County Board of Education to this Court's order directing that said Board set out in writing its reasons, standards and criteria applied in each instance, this Court finds that two of the Negro applicants who were denied have now withdrawn their applications; this Court further finds that in denying the other applications, the Board considered and applied standards and criteria which were in each instance germane to the proper operation of the Montgomery County, Alabama, public educational system as it presently exists and to the effective and efficient continued operation of that system for the benefit of students and parents of both races. Certain of the relevant matters considered by the Board

in making the assignments of Negro applicants and in denying others were: available space in the school to which the transfer was sought, as opposed to the available space in the school last attended by the applicant; pupil-teacher ratio in the school to which the transfer was sought, as opposed to the pupil-teacher ratio in the school last attended by the applicant; the availability of transportation; the suitability of established curricula for the particular pupil in the school to which transfer was sought as opposed to the curricula available in the school last attended; the adequacy of the pupil's academic preparation for admission to the school to which transfer was sought; the scholastic aptitude of the applicant for transfer; and the geographical location of the applicant's home with reference to the school last attended and the school to which the transfer was sought. None of the factors considered by the Board which resulted in the denial of certain of the applications of Negroes for transfer include hostility on the part of the Board, other public officials or the public.

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This Court now specifically finds and concludes that in the case of each of the applicants, whether the application was granted or denied, the action of the Montgomery County school authorities constituted a good faith implementation of the governing constitutional principles and a good faith compliance with the orders of this Court. Since *Brown* v. *Board of Education,* 349 U.S. 294, the courts have consistently recognized that the district courts, faced with the practical problems involved in the desegregation of the public school systems, would be justified in initially requiring something less than total desegregation. In recognition of this legal principle and in recognition of the particular local school problems existing in the Mont-

gomery County public school system (which problems have been made known to this Court during the course of this litigation), and in the exercise of this Court's equity power, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the Negro plaintiffs filed herein on September 1, 1964, and amended on the same date, seeking to have this Court order the Montgomery County Board of Education to grant all the applications for transfer and/or assignment as filed with the Board and thereby order the admission of all the Negro children who, by their applications, have requested assignment or transfer to schools heretofore attended only by pupils of the white race, be and the same is hereby denied.

It is the further ORDER, JUDGMENT and DECREE of this Court that the action taken by the Montgomery County Board of Education in granting the applications made by parents or guardians for the transfer and/or assignment of eight Negro children to schools in the Montgomery County public school system heretofore attended only by pupils of the white race, be and the same is hereby approved and accepted by this Court.

It is ORDERED that jurisdiction be and the same is hereby specifically retained.

Done, this the 5th day of September, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Suggestion of Amicus Curiae Re Substitution of Parties Under Rule 25(d) F.R.C.P.

(Filed January 11, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes Ben Hardeman, one of the Amici Curiae appointed by this Court on May 18, 1964, and suggests to the Court that the following Members of the Montgomery County Board of Education, Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin, are no longer serving, their terms of office having terminated in accordance with Title 62, Section 5, of the Code of Alabama of 1940, and that their successors, James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker have been elected, have qualified and are now serving as Members of the Montgomery County Board of Education, Montgomery, Alabama.

WHEREFORE, this Amicus Curiae suggests to the Court that an Order substituting James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, and deleting Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin as Defendants in this cause is now appropriate, and should be rendered.

This suggestion is made pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and is based upon all of

the pleadings and documents filed in this case and upon the Affidavit of the undersigned attached hereto.

Dated this 8th day of January, 1965.

BEN HARDEMAN
United States Attorney
Amicus Curiae

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AFFIDAVIT

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

I, Ben Hardeman, having been duly sworn, say:

I am the United States Attorney for the Middle District of Alabama.

In connection with my duties as United States Attorney and as Amicus Curiae in this cause, I have reviewed the file in this case and it discloses that Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin are no longer serving as Members of the Montgomery County Board of Education, Montgomery, Alabama, and that James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker have been elected, have qualified, and are now serving as Members of said Montgomery County Board of Education.

This affidavit is made in support of the suggestion of affiant as Amicus Curiae in reference to the Substitution of said parties to which it is attached.

BEN HARDEMAN
United States Attorney

Sworn to January 8th, 1965.

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Order Substituting Parties

(Filed January 11, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

It appears from the affidavit of Ben Hardeman, which is attached to his suggestion as Amicus Curiae re Substitution of Parties that the terms of office of Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin, defendants in this cause, have terminated as Members of the Montgomery County Board of Education, in accordance with the provision of Title 62, Section 5 of the Code of Alabama of 1940 and by reason of said termination they no longer hold office. It further appears that James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker have been elected to serve as Members of said Board, have qualified, and are presently serving in that capacity. It is therefore appropriate that an order of substitution be entered herein, as provided by Rule 25(d) of the Federal Rules of Civil Procedure, reflecting this change and that the new Members, James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, be served with the Memorandum Opinion and Decree of this Court as made and entered herein on July 31, 1964, and the Writ of Injunction issued thereupon on the same day.

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Now, THEREFORE, in consideration of the foregoing and pursuant to the provisions of Rule 25(d), Federal Rules of

Civil Procedure, it is the ORDER, JUDGMENT and DECREE of this Court that James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, be and they are hereby substituted as parties defendant for Harold M. Harris, Dr. H. P. Dawson and Dr. W. E. Goodwin.

The Clerk of this Court is ORDERED and DIRECTED to serve by registered mail upon James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, certified copies of the Memorandum Opinion and Decree of this Court made and entered in this cause on July 31, 1964, and the Writ of Injunction issued thereupon on the same day.

DONE this 11th day of January, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Defendants' Plan for Desegregation

(Filed January 15, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now Come the Defendants in the above entitled cause, and, as required by the order of this Court dated July 31, 1964, submit the following plan for the desegregation of the entire school system in Montgomery County, Alabama:

1. *Assignments*:

All existing school assignments shall continue without change except when transfers or assignments are authorized by the Superintendent of Education of Montgomery County, Alabama under the supervision and review of the Board of Education of Montgomery County, Alabama. Pupils entering any grade to which this plan shall have

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become applicable and pupils otherwise entering the school system for the first time when this plan shall have become applicable to the grade entered, shall be assigned without regard to race as is provided hereinafter.

2. *Transfer and Assignment*:

A. Parents or legal guardians of pupils residing in Montgomery County, Alabama prior to June 15, of each year, in grades to which this plan shall have become applicable wishing school assignment for the pupils to a

school attended only by pupils of a race other than that of the applicant, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end, as hereinafter provided, between June 1 and June 15, of each year for the next succeeding school year, beginning with the school year 1965-1966.

B. Parents or legal guardians of pupils entering the Montgomery County School System for the first time, in grades to which this plan shall have become applicable and not having been residents of Montgomery County on the preceding June 15, and wishing school assignment for the pupil to attend a school other than a school formerly attended by pupils of their race, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end at the Office of the Superintendent of Education of Montgomery County, Alabama and said application shall be promptly processed without regard to race in accordance with the provisions of this plan.

3. *Assignment Authority:*

In the assignment or transfer of pupils under this plan in or to specific schools, subject to the supervision and review by the Board of Education of Montgomery County, Alabama, the Superintendent of Education shall be charged with the responsibility for the assignment or transfer of pupils.

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4. *Transfer or Assignment Request:*

A. All applications for transfer or assignment to grades as reached under this plan must be filed on or before June 15 of each year on forms obtained from the Office of

the Superintendent of Education of Montgomery County, Alabama, by the parents or legal guardians of the pupils for whom such applications are to be made and must be completed, signed and returned between June 1 and June 15 of each year to the Office of the Superintendent of Education of Montgomery County, Alabama by the respective parents or legal guardians of the pupils. The proper forms will be furnished to parents of pupils on request between June 1 and June 15 of each year. Separate applications must be filed for each pupil for whom an assignment or transfer is requested.

B. In the assignment of pupils in those grades reached by this plan the relevant factors in the Alabama School Placement Law shall be applied without discrimination on a basis of race or color.

C. *Notice of action taken*: Notice of the action taken by the *Assignment Authority* on each application filed under this plan will be made on or before August 1 of each year to the parents or legal guardians of each pupil for whom the application was made.

5. *Applicability of Plan*:

This plan shall have application in the school year beginning September, 1965, to the 12th, 11th, 10th, 9th, and 2nd and 1st grades. This plan's applicability shall be extended through continued school years thereafter to include additional grades as follows:

For the school year beginning September, 1966, the 3rd and 8th grades.

For the school year beginning September, 1967, the 4th and 7th grades.

For the school year beginning September, 1968, the 5th grade.

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For the school year beginning September, 1969, the 6th grade.

Twice each week for the week beginning May 30, 1965, and June 6, 1965, the Superintendent of Education of Montgomery County, Alabama shall direct publication in a daily newspaper in the City of Montgomery, Alabama, the following notice:

"NOTICE TO PARENTS, PUPILS AND TEACHERS IN THE MONTGOMERY COUNTY PUBLIC SCHOOL SYSTEM:

You are hereby notified that as required by the order of the United States District Court for the Middle District of Alabama, the Board of Education, Montgomery County, Alabama, has adopted the following plan for the desegregation of the entire school system of Montgomery County, Alabama:

1. Grades in the school system are or will be desegregated at the following time:

a. for the school year beginning September, 1965, grades 12th, 11th, 10th, 9th, 2nd and 1st.

b. for the school year beginning September, 1966, the 3rd and 8th grades.

c. for the school year beginning September, 1967, the 4th and 7th grades.

d. for the school year beginning September, 1968, the 5th grade.

e. for the school year beginning September, 1969, the 6th grade.

2. All applications for assignment or transfer in the grades as reached by this plan shall be filed in the Office of the Superintendent of Education of Montgomery County, Alabama, between June 1 and June 15 of each year.

3. All such applications must be filed on forms obtained between June 1 and June 15 of each year from the Office of the Superintendent of Education for Montgomery County, Alabama, by the parents or legal guardians of the pupils for whom such applications are to be made and must be completed and signed by the respective parents or legal guardians of such pupils and returned by them to the Office of the Superintendent of Education for Montgomery County, Alabama.

4. All applications filed within the time and in the manner stated will be processed and determined without discrimination as to race of the applicants, and the parents or legal guardians of the applicants will be notified on or before August 1 of each year of the action taken on the applications so filed."

This 15th day of January, 1965.

Respectfully submitted,

HILL, ROBISON AND BELSER

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Certificates of Service (omitted in printing)

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Order

(Filed January 18, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The defendants in the above-styled case, pursuant to the order of this Court made and entered herein on July 31, 1964, filed with the Clerk of this Court on January 15, 1965, the plan under which said defendants propose to desegregate the public school system of Montgomery County, Alabama.

It is ORDERED that the objections, if any, to the proposed plan as now submitted and filed by said defendants, be made in writing and filed with the Clerk of this Court on or before February 16, 1965.

Done, this the 18th day of January, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Motion for Extension of Time

(Filed February 15, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, Amicus Curiae herein, moves the Court for an order extending the time within which the United States may file objections to the Defendants' plan for desegregation and a memorandum in support thereof so that the said objections may be filed by the United States no later than February 25, 1965.

The basis for this motion is that the granting of this additional time is necessary in order to properly and adequately consider and evaluate the said Defendants' plan for desegregation.

Dated this 15th day of February, 1965.

UNITED STATES OF AMERICA
By BEN HARDEMAN

BEN HARDEMAN
United States Attorney

ORDER

The motion of the United States of America for an order extending the time in which the United States may file objections to the Defendants' plan for desegregation and a memorandum in support thereof is hereby granted. It is ORDERED that the said objections may be filed by the United States no later than February 25, 1965.

DONE this 15th day of February, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Motion for Extension of Time

(Filed February 16, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs, by and through their Attorneys of Record, and move the Court for an Order extending the time within which they may file objections to the Defendants' plan for desegregation so that said objections may be filed in this Court not later than February 26, 1965.

In support of said Motion, Plaintiffs state that additional time is necessary in order that the Plaintiffs may properly and adequately prepare their objections to said plan.

Respectively submitted this 16th day of February, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Counsel for Plaintiffs

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Order Allowing Extension of Time
(Filed February 16, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The above and foregoing motion for an order extending the time for the Plaintiffs to file objections to Defendants' plan for desegregation being considered and understood by the Court, the same is hereby granted. It is ORDERED, ADJUDGED and DECREED that said objections may be filed by the Plaintiffs not later than February 25, 1965.

Done this 16th day of February, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Plaintiffs' Objections to Defendants' Plan of School Desegregation

(Filed February 23, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs, having been given until February 25, 1965 by order of this Court of February 16, 1965 to file objections to defendants' plan of desegregation, hereby give notice of the following objections thereto as will hereinafter be set out more fully and state:

1. In their plan, defendants propose to initially assign all students to schools for the 1965-66 school term on the basis solely of race or color and to consider applications for transfer from students entering grades 9-12 and 1-2 "without discrimination". Defendants further propose to consider applications of students "without discrimination" in grades 3 and 8 in 1966, in grades 4 and 7 in 1967, in grade 5 in 1968, and in grade 6 in 1969.

2. Defendants' desegregation plan provides only for the consideration of transfer requests made at the instance of

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the pupils. The plan does not provide for removing those factors from the school system which tend to encourage, promote and perpetuate segregation, e.g., segregated pre-school clinics, "feeder" schools which operate on a racial basis, segregated teaching and professional staff, segre-

gated special programs [e.g., classes for the handicapped or gifted, adult, vocational or commercial education or kindergarten programs]. In short, defendants' desegregation plan is not designed to eliminate imposed segregation from the Montgomery public school system. While plaintiffs object to defendants' failure to plan for the final abolition of segregation from the school system, plaintiffs emphasize the following points as that plan proposes to operate during 1965-66.

I

Defendants Should Be Required To Either Make Initial Assignments On A Nonracial Basis, Or Adopt A Genuine "Freedom Of Choice" Plan.

Defendants propose to initially assign all pupils in grades 9-12 and 1-2 on a racial basis for the 1965-1966 school year. (Negro pupils entering the first grade or those who enter the system during the summer, who want to attend a "white" school are required to apply for assignment at the school administrative office. If these pupils want to attend a "Negro" school, they will routinely present themselves at that school and be assigned thereto without fanfare.) Pupils in those grades who want to attend school with pupils of another race must apply for transfer and for their applications in accordance with the provisions of the Alabama Pupil Placement Act. They must now do so within the framework of dual school zones

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based solely on race, notwithstanding decisions in *Gaines* v. *Dougherty County Board of Education*, 329 F.2d 823; 334 F.2d 983 (5th Cir. 1964); *Armstrong* v. *Board of Education of Birmingham*, 333 F.2d 47 (5th Cir. 1964); and

Bush v. *Orleans Parish Board of Education,* 308 F.2d 491 (5th Cir. 1962) requiring such dual school zone lines to be redrawn on a non-racial basis.

Defendants' proposal to initially assign all pupils on a basis of race and to then permit transfers under certain conditions is clearly unconstitutional. *Bush* v. *Orleans Parish School Board,* supra; *Gibson* v. *Board of Public Instruction,* 272 F.2d 763. (5th Cir. 1959); *Mannings* v. *Board of Public Instruction,* 277 F.2d 370 (1960) and *Norwood* v. *Tucker,* 287 F.2d 798 (8th Cir. 1961).

Particularly is this so under defendants' plan which places a heavy burden on Negro parents. Under defendants' plan all prospective Negro transferees to "white" schools must: (a) have their parents secure transfer forms from the central administrative office; and (b) have their parents complete and return the forms to the central administrative office.

Plaintiffs submit that defendants should be required to redraw school zone lines on a non-racial basis and then initially assign pursuant thereto all students to the public school system. In the alternative, plaintiffs submit that the "freedom of choice" plan set out by the Fifth Circuit in *Gaines,* supra at 985 and *Stell* v. *Savannah-Chatham Board of Education,* 333 F.2d 55 at p. 65, is a reasonable alternative for this court to require defendants to implement during a period of "transition."

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II

There Are No Valid Reasons Why Grades 3-8 Cannot Be Immediately Desegregated.

Unless defendants are required to assign all students according to non-racial criteria, it is likely that pressures

and other concerns will reduce to a small number the Negro parents willing to seek the admission of their children into white schools. For example, last year about 30 Negro pupils applied for transfer in Montgomery and a number of these did not pursue administrative remedies under the Placement Act. Other school districts have had similar experiences during the early years of school desegregation. There is thus no reason to limit the opportunity to obtain a desegregated education to students in grades 9-12 and 1-2. *Stell* v. *Savannah-Chatham County Board of Education,* 333 F.2d 55 at p. 64 (5th Cir. 1964); *Hall* v. *West,* 335 F.2d 481 (5th Cir. 1964).

III

Defendants' Proposed Notice Will Not "Bring Home To Negro Pupils" Of Their Rights Under The Plan.

Defendants propose to publish notice of their "transfer" plan in a newspaper daily circulation four times within a two-week period, beginning May 30, 1965. Plaintiffs specifically object to:

(a) The legalistic, technical language of the notice;

(b) The absence of a statement setting out circumstances under which transfers may be sought and the conditions to be satisfied;

(c) The brevity of the "transfer period"—June 1-15, 1965;

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(d) The timing of the notice which is to be published the day before the transfer period begins to run;

(e) The proposal to limit publication of the notice to a newspaper of general circulation;

(f) The failure of the notice to advise Negro pupils entering either the first grade or the school system for the first time of their rights under the plan;

(g) The failure to give written notice to the parents of each child presently in the system as to their rights under the desegregation plan, together with an appropriate form upon which such choice may be made.

Plaintiffs submit that no less than a statement, mailed to each parent in the system, which sets forth simply and in layman's terms that pupils in the grades affected under the plan may be admitted to the closest "white" or "Negro" school under specific circumstances will suffice. *Gaines,* supra. Plaintiffs submit that the transfer period should be extended over a period of no less than 30 days, and that this period should include several weeks prior to the close of the school year.

In addition to newspaper publication and individual notice to parents, the notice should be conspicuously posted by defendants on bulletin boards within the schools. Teachers, principals and other faculty or school board personnel should be prohibited from attempting to influence the action taken by parents under the plan. *Stell* v. *Savannah-Chatham County Board of Education,* supra; *Gibson* v. *Board of Public Instruction of Dade County,* 272 F.2d 763 (5th Cir. 1959); *Augustus* v. *Board of Public Instruction of Escambia County,* 306 F.2d 862 (5th Cir. 1962).

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And as additional objections to said plan submitted by the defendants, plaintiffs assign the following:

1. The plan fails to set ascertainable standards for considering applications for assignment or transfer of pupils

to a particular school, in that under said plan the defendants are permitted to apply different standards to different pupils, as is indicated by the report to this Court made by the defendants on September 1, 1964; which report indicates the action taken by the defendants on the applications for transfer for the school year 1964-65.

2. The plan fails to provide for faculty and professional staff desegregation. *Board of Public Instruction of Duval County* v. *Braxton,* 326 F. 2d 616 (5th Cir., 1964); *Northcross* v. *Board of Education of Memphis,* 333 F. 2d 661 (6th Cir., 1964).

3. The plan makes no provision for providing bus transportation on a reorganized non-racial basis.

4. The plan does not attempt to nor can it effectuate desegregation of the public schools of Montgomery County, Alabama.

5. The plan does not provide for the elimination of school zone lines based on race. *Gaines* v. *Dougherty County Board of Education, supra; Bush* v. *Orleans Parish Board of Education,* 308 F. 2d 491 (5th Cir., 1962); *Augustus* v. *Board of Public Instruction,* 306 F. 2d 862 (5th Cir., 1962).

6. The plan places the burden of desegregating the public school system of Montgomery County, Alabama, on Negro pupils and their parents, and does not provide for

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initiation of desegregation by the Board; and as such, the plan is in conflict with the opinion and judgment of this

Court and is in conflict with decisions of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

7. The plan fails to abolish the continued use of racial factors in the planning of extra-curricula activities, construction of schools, planning of school budgets and the disbursement of school funds.

8. The plan sets up dual procedures and dual time limits for Negro students who wish to attend white schools and for Negro students who wish to attend Negro schools.

9. The plan fails to provide for immediate desegregation of vocational programs offered by the defendants.

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WHEREFORE, plaintiffs pray that pursuant to this court's order and opinion of July 31, 1964, that the court will promptly set a hearing on plaintiffs' objections to the plan and that upon such hearing the court will grant the relief prayed for above. Plaintiffs further pray that this court will retain jurisdiction of this cause for the purpose of granting such further relief as may be required by further developments.

Respectfully submitted,

FRED GRAY
JACK GREENBERG
CHARLES JONES, JR.

CERTIFICATE OF SERVICE (omitted in printing)

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Amicus Curiae Objections to Plan for Desegregation

(Filed February 25, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, as Amicus Curiae herein, objects to the proposed plan for the desegregation of the Montgomery County, Alabama, school system submitted by the defendants on January 15, 1965, for the following reasons:

1. The proposed plan contemplates initial assignment of all students upon the basis of their race.

2. The proposed plan does not provide for the ultimate elimination of the present bi-racial school district zones or attendance areas.

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3. The proposed plan places upon Negro children and their parents the burden of applying for reassignment on a non-racial basis.

4. The applicability of the proposed plan to the seventh grade is delayed too long, and there is no provision for lateral transfer on a selective basis to grades not already affected by the plan.

JOHN DOAR
Acting Assistant Attorney General

BEN HARDEMAN
United States Attorney

JONATHAN B. SUTIN, Attorney
Department of Justice

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Notice of Taking Depositions

(Filed March 29, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Hon. Ben Hardeman, U. S. Attorney
Post Office Building
Montgomery, Alabama

Hon. John Doar, U. S. Attorney
Hon. Jonathan B. Sutin
United States Department of Justice
Washington, D. C.

Hill, Robison & Belser
Attorneys and Counsellors at Law
26 South Perry Street
Montgomery, Alabama

Walter McKee, Superintendent
Montgomery County Schools
305 South Lawrence Street
Montgomery, Alabama

PLEASE TAKE NOTICE that at 9 o'clock a.m. on the 1st day of April, 1965 in the Attorney's Conference Room, second floor, Post Office Building, Montgomery, Alabama, the plaintiffs in the above-entitled action will take the deposition of Mr. Walter McKee, Superintendent of Schools of Mont-

gomery County, Alabama, upon oral examination, pursuant to Federal Rules of Civil Procedure before Mrs. Dorothy Jackson, a notary public, or some other officer authorized by law to administer oaths.

Please take further notice that Walter McKee is hereby required to produce upon such examination all papers, records, books, memoranda and other documentary evidence from July 31, 1963 to date, showing the following:

1. For each public school in the Montgomery County, Alabama, school district (using latest available figures unless otherwise indicated):

(a) Grades served by each school;

(b) Number of classrooms and pupil capacity (if differentiation is made between normal pupil capacity and emergency pupil capacity, specify);

(c) Number of Negro pupils assigned and/or in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(d) Number of white pupils in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(e) Number of Negro pupils in each grade;

(f) Number of white pupils in each grade;

(g) Difference between the number of pupils enrolled and capacity of school (i.e., either in excess or below pupil capacity);

(h) Average class size for kindergarten, regular and special classes and average for all classes;

(i) Pupil-teacher ratio;

(j) Number of Negro teachers and other Negro administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

(k) Number of white teachers and other administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

2. All courses available in each and every grade of each school in the Montgomery County school system.

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3. Expenditures, per pupil, for white and Negro pupils, indicating whether such expenditures are from state or local funds.

4. The number of new teachers hired during each of the past five school years and the total number of teachers employed during each such school year (if possible, distinguish between replacement teachers and new teachers);

5. Each school attendance area or zone, and using best available estimates or projections if precise figures are not available, show;

(a) Number of Negro school pupils residing within each such area and attending the grades for which such area applies;

(b) The number of white school pupils residing within each such area and attending the grades for which such area applies;

6. List all new schools, proposed or under construction, with information indicating with respect to each;

(a) Location;

(b) Expected date of occupancy;

(c) Pupil capacity;

(d) Probable area to be served;

(e) Number of Negro and white pupils living in area to be served in grades to be served;

7. Age of all school buildings.

8. Extra-curricular use of all school facilities, i.e., driver training courses, pre-school clinics, and all such activities not part of normal school curriculum.

9. Minutes of all meetings of the Montgomery County Board of Education from July 31, 1964 to date.

10. Copies of all Annual Reports and any and all other documents compiled by the Montgomery County Board of Education and sent to the Alabama State Board of Education from July 31, 1964 to date.

11. Copies of all maps and other descriptions, verbal and diagrammatic, showing the school districts and "feeder"

plans for access to the Junior High and High Schools, throughout Montgomery County, Alabama showing changes from July 31, 1964 to date.

12. All records involving the kind and cost of school construction throughout Montgomery County, Alabama, since July 31, 1964.

13. All attendance records of schools operated by the Montgomery County Board of Education from July 31, 1964 to date.

14. All school bus and other school transportation records of the Montgomery County Board of Education from July 31, 1964 to date.

15. All records involving intra-county school transfers of students in Montgomery County, Alabama, from July 31, 1964 to date.

16. All other documents connected with the administration and operation of the schools of Montgomery County, Alabama since July 31, 1964 on which there appear designations of race or color.

17. Copies of all records, reports, investigations, result of examinations, and all other documents, including the names and addresses of all pupils who transferred or applied for transfer from one school (public school) in Montgomery County to another public school in Montgomery County since July 31, 1964.

18. Copies of all correspondence sent at the direction of the Montgomery County Board of Education to the parents of students of all schools in this county that were affected by the Court's order of July 31, 1964.

19. Copies of all substitute teachers list indicating which lists were distributed to what Principals since July 31, 1964 to date.

20. Copies of all records, documents, reports, studies, investigations and all of written evidence showing every-

thing which the defendants have done since July 31, 1964, toward eliminating the dual school system based upon race and color as found to exist by the court in its order of July 31, 1964.

21. Copies of all written evidence showing the affirmative steps taken by the defendants to provide and operate a desegregated educational system in Montgomery County, Alabama since July 31, 1964.

22. Copies of all rules and regulations concerning:

(1) the initial assignment of students and,

(2) the transfer of students from one school to another school in the County system.

23. Average daily attendance list for each school in Montgomery County school system, since September 1, 1964.

24. Copies of all circulars or informational letters circulated by the Superintendent's office or Board of Education to principals or teachers for distribution to pupils for delivery to parents.

25. List of all courses taught per grade for each school in Montgomery school system.

The oral examination will continue from day to day until completed. You are invited to attend and cross examine.

Done this 29th day of March, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

Defendants' Motion to Extend Time

(Filed March 29, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants in the above entitled cause and show unto the Court as follows:

1. That objections to the desegregation plan, as submitted by Plaintiffs in this proceeding, were filed with this Court, after extension, on February 25, 1965. The Court thereupon set April 5, 1965 as the date for the hearing of said objections.

2. On March 29, 1965, at approximately 1:30 P.M., the Plaintiffs served the Defendant, Walter T. McKee, with notice that his deposition is to be taken at 9:00 A.M. on April 1, 1965. The Defendant, Walter T. McKee, was also served with a detailed and involved subpoena duces tecum containing some twenty-five items of compilation. Copies of this said motion and said subpoena duces tecum is attached hereto and made a part hereof.

It is impossible for the Defendants to compile this voluminous data within the two day period as set by the Plaintiffs, and this Defendant respectfully shows that such a requirement is unreasonably oppressive to him and to the administration of the Montgomery County Board of Education.

WHEREFORE, the Defendants pray that the hearing of the said objections be postponed and continued, to be set after this Defendant is given reasonable time to comply with the requirements as set out in the above-mentioned motion and subpoena duces tecum. The Defendants pray in the

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alternative that Walter T. McKee not be required to compile and furnish the voluminous and detailed information sought by the said subpoena duces tecum, but that the Plaintiffs go to the Board of Education office of Montgomery County, and avail themselves of the records therein kept, as they did prior to July 31, 1964.

HILL, ROBISON AND BELSER
Attorneys for Defendants

Certificates of Service (omitted in printing)

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Subpoena Dated March 29, 1965

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

YOU ARE COMMANDED to appear at Room 208—Post Office Building in the city of on the 1st day April, 1965, at 9:00 o'clock A. M. to testify on behalf of Plaintiffs at the taking of a deposition in the above entitled action pending in the United States District Court for the Middle District of Alabama and bring with you the documents listed on the attached sheet.

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Please take further notice that Walter McKee is hereby required to produce upon such examination all papers, records, books, memoranda and other documentary evidence from July 31, 1964 to date, showing the following:

1. For each public school in the Montgomery County, Alabama, school district (using latest available figures unless otherwise indicated):

(a) Grades served by each school;

(b) Number of classrooms and public capacity (if differentiation is made between normal pupil capacity and emergency pupil capacity, specify);

(c) Number of Negro pupils assigned and/or in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(d) Number of white pupils in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(e) Number of Negro pupils in each grade;

(f) Number of white pupils in each grade;

(g) Difference between the number of pupils enrolled and capacity of school (i.e., either in excess or below pupil capacity);

(h) Average class size for kindergarten, regular and special classes and average for all classes;

(i) Pupil-teacher ratio;

(j) Number of Negro teachers and other Negro administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

(k) Number of white teachers and other administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

2. All courses available in each and every grade of each school in the Montgomery County school system.

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3. Expenditures, per pupil, for white and Negro pupils, indicating whether such expenditures are from state or local funds.

4. The number of new teachers hired during each of the past five school years and the total number of teachers employed during each such school year (if possible, distinguish between replacement teachers and new teachers);

5. Each school attendance area or zone, and using best available estimates or projections if precise figures are not available, show;

(a) Number of Negro school pupils residing within each such area and attending the grades for which such area applies;

(b) The number of white school pupils residing within each such area and attending the grades for which such area applies;

6. List all new schools, proposed or under construction, with information indicating with respect to each;

(a) Location;

(b) Expected date of occupancy;

(c) Pupil capacity;

(d) Probable area to be served;

(e) Number of Negro and white pupils living in area to be served in grades to be served;

7. Age of all school buildings.

8. Extra-curricular use of all school facilities, i.e., driver training courses, pre-school clinics, and all such activities not part of normal school curriculum.

9. Minutes of all meetings of the Montgomery County Board of Education from July 31, 1964 to date.

10. Copies of all Annual Reports and any and all other documents compiled by the Montgomery County Board of

Education and sent to the Alabama State Board of Education from July 31, 1964 to date.

11. Copies of all maps and other

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plans for access to the Junior High and High Schools, throughout Montgomery County, Alabama showing changes from July 31, 1964 to date.

12. All records involving the kind and cost of school construction throughout Montgomery County, Alabama, since July 31, 1964.

13. All attendance records of schools operated by the Montgomery County Board of Education from July 31, 1964 to date.

14. All school bus and other school transportation records of the Montgomery County Board of Education from July 31, 1964 to date.

15. All records involving intra-county school transfers of students in Montgomery County, Alabama, from July 31, 1964 to date.

16. All other documents connected with the administration and operation of the schools of Montgomery County, Alabama since July 31, 1964 on which there appear designations of race or color.

17. Copies of all records, reports, investigations, result of examinations, and all other documents, including the names and addresses of all pupils who transferred or ap-

plied for transfer from one school (public school) in Montgomery County to another public school in Montgomery County since July 31, 1964.

18. Copies of all correspondence sent at the direction of the Montgomery County Board of Education to the parents of students of all schools in this county that were affected by the Court's order of July 31, 1964.

19. Copies of all substitute teachers list indicating which lists were distributed to what Principals since July 31, 1964 to date.

20. Copies of all records, documents, reports, studies,

[Copy illegible]

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that the defendants have done since July 31, 1964, toward eliminating the dual school system based upon race and color as found to exist by the court in its order of July 31, 1964.

21. Copies of all written evidence showing the affirmative steps taken by the defendants to provide and operate a desegregated educational system in Montgomery County, Alabama since July 31, 1964.

22. Copies of all rules and regulations concerning:

(1) the initial assignment of students and,

(2) the transfer of students from one school to another school in the County system.

23. Average daily attendance list for each school in Montgomery County school system, since September 1, 1964.

24. Copies of all circulars or informational letters circulated by the Superintendent's office or Board of Education to principals or teachers for distribution to pupils for delivery to parents.

25. List of all courses taught per grade for each school in Montgomery school system.

The oral examination will continue from day to day until completed. You are invited to attend and cross examine.

Done this 29th day of March, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Order Extending Time for Taking Deposition and Holding Hearing

(Filed March 30, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motion of the defendants filed herein on March 29, 1965, seeking to have the objections to their proposed desegregation plan postponed and continued until said defendants are given a reasonable time to comply with the requirements set out in plaintiffs' subpoena duces tecum served upon the attorneys for said defendants on March 29, 1965.

Upon consideration of said motion, it is ORDERED that the taking of the deposition of the defendant Walter T. McKee, heretofore scheduled by plaintiffs for 9 a.m. on April 1, 1965, be and the same is hereby stayed until April 15, 1965.

It is further ORDERED that the hearing upon the objections to the desegregation plan heretofore filed with this Court by the defendants, said hearing being presently scheduled for 10 a.m. on April 5, 1965, be and the same is hereby continued until 10 a.m. on April 28, 1965.

Done, this the 30th day of March, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

Amendment to Plaintiff's Objections to Defendant's Plan of School Desegregation

(Filed April 24, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Plaintiffs in the above-styled cause and amend hereby their objections to Defendant's Plan of School Desegregation, heretofore filed herein, by adding thereto a new paragraph to be numbered 10 and to state as follows:

10. The Plan in its method of application of the Alabama Pupil Placement Law to assign Plaintiffs and the class they represent both prospectively and retrospectively, is an unconstitutional application of the said Pupil Placement Law, and as applied, said Pupil Placement Law violates the 14th Amendment to the Constitution of the United States.

FRED D. GRAY
JACK GREENBERG
CHARLES JONES, JR.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (omitted in printing).

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Order Extending Time for Holding Hearing

(Filed April 28, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

It is ORDERED that the hearing upon the objections to defendants' proposed desegregation plan be and the same is hereby continued to commence at 10 a.m., Wednesday, May 5, 1965.

Done, this the 28th day of April, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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(Court's Reporter's Transcript of Court's Remarks Dictated Into Record at Close of Hearing on May 5, 1965, Filed May 6, 1965, at the Request of Appellants Appears With the Other Transcripts in Vol. III of This Appeal Record, at Original Page 442.)

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Order Approving and Modifying Plan for Desegregation

(Filed May 18, 1965)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

This cause coming on to be heard on May 5, 1965, on the objections of the plaintiffs and of the United States to the plan for desegregation filed pursuant to the order of this Court,

It is the ORDER, JUDGMENT, and DECREE of this Court that the plan for desegregation be and the same is hereby approved with the following modification:

(1) Grade seven, in addition to grades one, two, nine, ten, eleven, and twelve, is to be desegregated the coming school term, September 1965, by the Montgomery County Board of Education.

(2) All applications for transfer or assignment to grades one, two, seven, nine, ten, eleven, and twelve must be filed on or before July 20, 1965, on forms obtained from the Office of the Superintendent of Education of Montgomery County, by the parents or legal guardians of the pupils for whom such applications are to be made. These applications shall be made available and furnished, upon request, to the parents or legal guardians of the pupils for whom such applications are being made, at the Office of the Superintendent of Education of Montgomery County,

between June 21 and July 20, 1965, Monday through Friday, from 8:30 A.M. to 5:00 P.M. It shall not be necessary for more than one parent or guardian to pick up, return, and sign the application.

(3) The Superintendent of Education of Montgomery County shall direct the principals of the Montgomery County Public Schools to enclose in an envelope together with each pupil's final report card for the school term 1964-1965, the following Notice:

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NOTICE TO ALL PARENTS OR GUARDIANS OF PUPILS IN THE MONTGOMERY COUNTY PUBLIC SCHOOL SYSTEM

In accordance with an order of the United States District Court for the Middle District of Alabama, the Montgomery County Board of Education will desegregate grades one and two of the elementary schools, grades seven and nine of the junior high schools, and grades ten, eleven, and twelve of the senior high schools for the school year commencing in September 1965.

As the parents or guardians of pupils who will attend these grades in September 1965, you may submit an application to the Office of the Superintendent of Education of Montgomery County for your child to attend a school that was formerly attended only by members of another race. You may obtain the applications for assignment and transfer at the Office of the Superintendent of Education of Montgomery County between June 21 and July 20, 1965, on Monday through Friday, from 8:30 A.M. to 5:00 P.M. You must complete, sign, and return the application to the Office of the Superintendent of Education on or before

July 20, 1965. It is not necessary for more than one parent to pick up, sign, or return the application.

All applications filed within the time and in the manner as stated above will be processed and acted on without discrimination as to the race of the applicants. You will be notified on or before August 17, 1965, whether your application has been accepted or rejected.

The Montgomery County Public School System is presently divided into elementary, junior high, and high school districts. (Copy Illegible.)

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It is the further ORDER of this Court that the Montgomery County Superintendent of Education shall direct the publication of the Notice set forth above, such notice being modified, however, to include the following paragraph in place of the last paragraph (regarding school districts) of the above Notice:

> In the event you have not already been notified of the school district in which you have your residence, you may obtain that information from the Office of the Superintendent of Education of Montgomery County when you pick up an application for assignment or transfer;

such notice to be published in a newspaper of general daily circulation in Montgomery County, Alabama, on June 13, June 20, and June 27, 1965.

It is the further ORDER of this Court that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education report to this Court in writing on or before 9:00 A.M., August 10, 1965, as to the action taken by the Montgomery County Board of Education and

Montgomery County Superintendent of Education on each application for transfer or assignment filed pursuant to the plan for desegregation as modified by this Order.

It is the further ORDER of this Court that the Montgomery County Superintendent of Education shall notify, in writing, the parents or the guardians of pupils for whom application for assignment or transfer has been made on or before August 17, 1965, as to the action taken by the said Montgomery County Superintendent of Education and the Montgomery County Board of Education on each application for transfer or assignment filed pursuant to the plan for desegregation as modified by this Order.

It is the further ORDER of this Court that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education, or their successors in office, file with this Court on or before January 14, 1966, their detailed plan for the operation of the Montgomery County Public School System commencing with the 1966-1967 school year; such plan to be designed to eliminate segregation of students based upon race and the complete elimination of the biracial school system within a reasonable time.

It is the further ORDER of this Court that jurisdiction of this cause be and the same is hereby specifically retained.

Done this 18th day of May, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

Defendants' Report Pursuant to Order of May 18, 1965

(Filed August 9, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Defendants in the above entitled cause and, pursuant to this Court's Order dated May 18, 1965, file the following report as to the action taken by the Montgomery County Board of Education and the Montgomery County Superintendent of Education on each application for transfer or assignment filed pursuant to the plan for desegregation, as modified by order of this Court.

A total of forty-nine (49) applicants for transfer or assignment were received by the Montgomery County Board of Education on or before five o'clock p.m., July 20, 1965. These 49 applications were processed by the Board in accord with the Court's Order, without discrimination on the basis of race or color. As the result of the Defendants' compliance with the Court's Orders, eighteen applicants were accepted and thirty-one applicants were rejected, with grades 1, 2, 7, 9, 10, 11, and 12 all being desegregated.

These applicants are herein listed alphabetically with pertinent information considered by the Defendants in making their decision and the action taken by the Defendants.

1. *Bobbie Arrington,* 516 Troy Street, Montgomery, Alabama.

This applicant attended Carver Senior High School last year, completing the tenth grade and applied to attend Lanier High School, requesting admission to the eleventh grade.

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The applicant lives in Carver High School district and lives approximately six blocks from Lanier and approximately ten blocks from Carver Senior High School.

The parent and pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

2. *Sergeant Perry Austin,* 401 Troy Street, Montgomery, Alabama.

The applicant attended Carver Senior High School last year, completing the tenth grade and applied to attend Lanier High School this year, requesting admission to the eleventh grade. The applicant lives in the Carver High School district.

Applicant lives approximately six blocks from Lanier and approximately ten blocks from Carver.

The parent and the pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

3. *Woodrow Austin,* 401 Troy Street, Montgomery, Alabama.

The applicant attended Carver Elementary School last year, completing the sixth grade, and has applied to attend Lanier High School requesting admission to the seventh grade.

No seventh grade work is offered at Lanier High School. The Defendants denied this application.

4. *Gloria Jean Beamen,* Route 3, Box 417-T, Montgomery, Alabama.

The applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights

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Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

5. *Eloise Boswell,* Route 3, Box 402-B, Montgomery, Alabama.

The applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol

Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

6. *Johnnie Boswell,* Route 3, Box 402-B, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade and applied to attend Lee High School, requesting admission to the tenth grade.

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Senior high school pupils residing in the area of the applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

7. *Delores Rosetta Boyd,* 1007 South Holt Street, Montgomery, Alabama.

The applicant attended Loveless Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the middle of the Carver district and approximately fifteen blocks from Lanier and twelve blocks from Carver. The route from this applicant's home

to Lanier crosses several busy thoroughfares and will be more hazardous than the route to Carver where a tunnel is provided for students crossing Fairview Avenue.

Lanier High School will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier is two thousand. Lanier will have a higher pupil-teacher ratio than will Carver and will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. The capacity at Carver High School has been greatly increased this year because of an addition of fourteen rooms which will be ready by the opening of school.

The Defendants denied this application.

8. *Janice Eileen Caple,* 2014 Wabash, Montgomery, Alabama.

The applicant attended the Alabama State Laboratory High School last year, completing the ninth grade, and applied to attend Lanier High School, requesting admission to the tenth grade.

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The applicant lives in the Carver district and lives adjacent to the campus of Carver High School and approximately fourteen blocks from Lanier. The route from the applicant's home to Lanier crosses several busy thoroughfares and is much more hazardous than the route to Carver. Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is two thousand. Lanier will have a higher pupil-teacher ratio than will Carver, and Lanier will have to use all of its regular rooms each period and approxi-

mately fourteen makeshift rooms. An addition of fourteen rooms is being built at Carver High and will be ready for the opening of school.

The Defendants denied this application.

9. *Bertha Carol Campbell,* Route 3, Box 402, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade, and has applied to attend Lee High School, requesting admission to the tenth grade.

Senior high school pupils in the area of the residence of the applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

10. *Arlam Carr, Jr.,* 720 South Hall Street, Montgomery, Alabama.

The applicant attended Crosby High School, Waterbury, Connecticut last year, completing the ninth grade, and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the Booker Washington High School district and lives approximately three blocks from Booker Washington High School and approximately twenty-five blocks from Lanier. The route to Lanier crosses several busy thoroughfares and will be more hazardous than the route to Booker Washington.

Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is approximately two thousand. Lanier will have a higher pupil-teacher ratio than will Booker Washington and will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. The capacity at Booker Washington was greatly increased with the addition of fourteen rooms last year.

The Defendants denied this application.

11. *Esau Carter,* Route 3, Box 417-Y, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the eighth grade, and applied to attend Capitol Heights Junior High School, requesting admission to the ninth grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

12. *Emma Jean Carter,* Route 3, Box 417-Y, Montgomery, Alabama.

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The applicant attended Booker Washington Senior High School last year, completing the eleventh grade and has

applied to attend Lee High School, requesting admission to the twelfth grade.

Senior high school pupils in the area of this applicant's residence, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the twelfth grade in Lee High School.

13. *Linda Sue Cox,* Quarters 676-A, Maxwell Air Force Base, Alabama.

The applicant attended Maxwell Elementary School last year, completing the sixth grade, and has applied to attend Baldwin Junior High School, requesting admission to the seventh grade.

Most of the other children living on Maxwell Air Force Base attend Baldwin Junior High School.

The parent and pupil have expressed a preference for the applicant to attend Baldwin Junior High School.

This applicant is admitted to the seventh grade in Baldwin Junior High School.

14. *Belinda Joyce Green,* 3102 Tyler Road, Montgomery, Alabama.

This applicant applied to attend the first grade at Capitol Heights Elementary School.

The applicant lives approximately three miles from Capitol Heights Elementary School and there is no Montgomery County transportation to Capitol Heights Elementary School from this area. No pupils, white or colored, who live along the Lower Wetumpka Road attend Capitol Heights Elementary School.

The Defendants denied this application.

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15. *George Gregory Green, Jr.*, Route 5, Box 284, Montgomery, Alabama.

This applicant applied to attend the first grade at Capitol Heights Elementary School.

The father of the applicant was told verbally and it was printed on the application, that the birth certificate must accompany the completed applications for pupils applying to enter the first grade. This applicant was the only applicant for the first grade whose parents failed to turn in the birth certificate with the application. All pupils entering the first grade are required by law to present a birth certificate showing that they will be six on or before October 2, in order that they may enter school. This applicant has failed to meet this requirement.

The Defendants denied this application.

16. *Hattie Bell Harper*, Route 3, Box 405, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the eighth grade, and has applied for attendance at Capitol Heights Junior High School, requesting admission to the ninth grade.

This applicant failed part of her work in the eighth grade and will have to take additional eighth grade work in order to become eligible for admission in the ninth grade. The eighth grade is not included in the plan as approved by this Court.

The Defendants denied this application.

17. *Ruth Evelyn Johnson*, Route 3, Box 400E, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade, and has applied to attend Lee High School, requesting admission to the tenth grade.

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Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is accepted for the tenth grade at Lee High School.

18. *Helen C. Jordan,* Route 3, Box 402-V, Montgomery, Alabama.

The applicant attended Booker Washington Senior High School last year, completing the eleventh grade and applied to attend Lee High School, requesting admission to the twelfth grade.

Senior high school pupils in the area of this applicant's residence, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for the applicant to attend Lee High School.

The applicant is admitted to the twelfth grade in Lee High School.

19. *Aldenia Lewis,* 365 Kohn Street, Montgomery, Alabama.

The applicant attended Carver Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the Carver High School district approximately six blocks from Lanier and ten blocks from Carver.

The parent and pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the tenth grade in Lanier High School.

20. *John Harrison McCain,* 2052 Stephens Street, Montgomery, Alabama.

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The applicant attended Carver Senior High School last year, completing the tenth grade and has applied to attend Lanier High School, requesting admission to the eleventh grade.

The applicant resides in the Carver district and lives approximately three blocks from Carver and fifteen blocks from Lanier. The route to Lanier crosses several busy thoroughfares and is more hazardous than the route to Carver where a tunnel is provided for children to cross Fairview Avenue. Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is two thousand. Lanier will have a higher pupil-teacher ratio than will Carver, and Lanier will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. An additional fourteen rooms are being built at Carver and will be ready for the opening of school.

The Defendants denied this application.

21. *Joan Mastin,* 726 Alexander Street, Montgomery, Alabama.

This applicant attended Carver High School last year, completing the tenth grade, and has applied to attend Lanier High School, requesting admission to the eleventh grade.

This applicant resides in the Carver district and lives approximately three blocks from Carver and twelve blocks from Lanier. The route to Lanier crosses several busy thoroughfares and is more hazardous than the route to Carver where a tunnel is provided for children to cross Fairview Avenue. Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and a normal capacity of Lanier High School is two thousand. Lanier additional fourteen rooms are being built at Carver and will have a higher pupil-teacher ratio than will Carver, and Lanier will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. An

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will be ready for the opening of school.

The Defendants denied this application.

22. *Yvonne Miles,* 199 John Morris Avenue, Montgomery, Alabama.

The applicant attended Hayneville Road Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the Carver transported area, however, there are pupils within a few blocks of the residence of this applicant who attend Lanier High School and furnish their own transportation.

The parent and pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the tenth grade in Lanier High School, however, there will be no transportation furnished to Lanier High School because such transportation is not furnished for other students attending Lanier High School in the vicinity of the residence of the applicant.

23. *Horace Nettles, III,* Route 3, Box 402-TT, Montgomery, Alabama.

The applicant attended the Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

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The Defendants denied this application.

24. *La Brenda Nettles,* Route 3, Box 402-TT, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade and applied to attend Lee High School, requesting admission to the tenth grade.

Senior high pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for this applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

25. *Patricia Lee Oliver,* 1116 Thurman Street, Montgomery, Alabama.

The applicant attended St. Jude School last year, completing the ninth grade and has applied to attend Lanier High School, requesting admission to the tenth grade.

This applicant lives in the Booker Washington High School district and lives approximately seventeen blocks from Lanier High School. The route to Lanier crosses several busy thoroughfares and will be more hazardous than the route to Booker Washington.

Lanier High School will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is approximately two thousand pupils. Lanier will have a higher pupil-teacher ratio than will Booker Washington and will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. The capacity of Booker Washington was greatly increased with the addition of fourteen rooms last year.

The Defendants denied this application.

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26. *Doris Jean Packs,* 401 Troy Street, Montgomery, Alabama.

This applicant attended Carver Elementary School last year, completing the sixth grade and applied to attend Lanier High School, requesting admission to the seventh grade.

No seventh grade work is offered at Lanier High School.

The Defendants denied this application.

27. *Mary Estella Perry,* 401 Troy Street, Montgomery, Alabama.

The applicant attended Carver Elementary School last year, completing the sixth grade and applied to attend Lanier High School requesting admission to the seventh grade.

No seventh grade work is offered at Lanier High School.

The Defendants denied this application.

28. *Minerva Elizabeth Relf,* Route 3, Box 405, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the eighth grade and applied to attend Capitol Heights Junior High School, requesting admission to the ninth grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

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29. *Jamal Sadler,* 1987 Upper Wetumpka Road, Montgomery, Alabama.

The applicant attended Houston Hill Junior High School last year, completing the eighth grade and applied to attend Capitol Heights Junior High School, requesting admission to the ninth grade.

This applicant lives in the Houston Hill Junior High School district, but lives a little closer to Capitol Heights Junior High School than to Houston Hill.

The parent and the pupil have expressed a preference for the applicant to attend Capitol Heights Junior High School.

This applicant is admitted to the ninth grade in the Capitol Heights Junior High School.

30. *Woodrow C. Sadler,* 1987 Upper Wetumpka Road, Montgomery, Alabama.

The applicant attended William Burns Paterson Elementary School last year, completing the fifth grade and applied to attend the Capitol Heights Elementary School, requesting admission to the sixth grade.

The sixth grade is not included in the desegregation plan as approved by this Court.

The Defendants denied this application.

31. *Earnestine Scales,* Route 3, Box 417-M, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the seventh grade and applied to attend the Capitol Heights Junior High School, requesting admission to the eighth grade.

The eighth grade is not included in the desegregation plan as approved by this Court.

The Defendants deny this application.

32. *Melvin Scales,* Route 3, Box 417-M, Montgomery, Alabama.

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This applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway, north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

33. *Emma Jean Scott,* 1606 Goode Street, Montgomery, Alabama.

This applicant attended Carver Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

This applicant lives in the Carver High School district, but lives about three blocks from Lanier and ten blocks from Carver.

The parent and pupil have expressed a preference for this applicant to attend Lanier High School.

This applicant is admitted to the tenth grade in Lanier High School.

34. *Betty Jean Scott,* Route 3, Box 417-L, Montgomery, Alabama.

This applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend the Capitol Heights Junior High School, requesting admission to the seventh grade.

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No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

35. *Bill Scott,* Route 3, Box 417-L, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year in the seventh grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights

Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

36. *Sheryl D. Seay,* Route 3, Box 404-A, Montgomery, Alabama.

This applicant attended Carver Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

37. *Jerry W. Taylor, Jr.,* 2733 First Street, Montgomery, Alabama.

This applicant attended Carver High School last year, completing the tenth grade and applied to attend Lanier High School, requesting admission to the eleventh grade.

Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Carver or Lanier Senior High School.

The parent and pupil have expressed a preference for this applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

38. *Sandra Lynn Taylor,* Route 3, Box 402-W, Montgomery, Alabama.

This applicant attended Booker Washington High School last year, completing the eleventh grade and has applied to attend Lee High School, requesting admission to the twelfth grade.

Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

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The parent and pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the twelfth grade in Lee High School.

39. *Robert Taylor, III,* Route 3, Box 402-W, Montgomery, Alabama.

This applicant attended Booker Washington High School last year, completing the tenth grade and applied to attend Lee High School this year, requesting admission to the eleventh grade.

Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for this applicant to attend Lee High School.

This applicant is admitted to the eleventh grade in Lee High School.

40. *Willis Tolliver, Jr.,* 1985 Upper Wetumpka Road, Montgomery, Alabama.

This applicant attended Booker Washington Senior High School the year before last and was at that time in the twelfth grade. The applicant has applied to attend Lee High School, requesting admission to the twelfth grade.

According to the father of this applicant, he went back to Booker Washington last year and only stayed a few weeks before dropping out in November to go to work. This applicant's records show that he was nineteen years of age in July and has passed only half of some courses (one semester) and during his last school attendance was taking some tenth, eleventh and twelfth grade courses.

The applicant lives in the Booker Washington School district and the Board feels that it would be better for him to return to Booker Washington to complete the courses which he had started there.

The Defendants denied this application.

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41. *Myrtis Vinson,* 351 Auburn Street, Montgomery, Alabama.

This applicant attended Carver High School last year, completing the tenth grade and applied to attend Lanier High School, requesting admission to the eleventh grade.

This applicant lives in the Carver High School district. The applicant lives approximately five blocks from Lanier and ten blocks from Carver.

The parent and the pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

42. *Lennon Whitlow, Jr.*, Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington High School last year as an irregular student and has applied to attend Lee High School, requesting admission to the twelfth grade.

This applicant has not completed some of his junior high school work. No junior high school work is offered at Lee High School. The applicant, when attending Booker Washington High School will be able to make up the necessary junior high school work in the adjacent junior high school building.

The Defendants denied this application.

43. *Andrew Russell Whitlow*, Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year in the ninth grade and applied to attend Lee High School requesting admission to the tenth grade. This applicant has not completed all of his ninth grade work and no ninth grade work is offered at Lee. This applicant, when attending Booker Washington High School, will be able to make up the necessary ninth grade work in the adjacent junior high school building.

The Defendants denied this application.

44. *Major Eugene Whitlow,* Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year in the ninth grade and applied to attend Lee High School, requesting admission to the tenth grade.

This applicant has not completed all of his junior high school work and no junior high school work is offered at Lee High School. This applicant, when attending Booker Washington High School, could make up the necessary junior high school work in the adjacent junior high school building.

The Defendants denied this application.

45. *Walter Jerome Whitlow,* Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year completing the eighth grade, and applied to attend Capitol Heights Junior High School, requesting admission in the ninth grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

46. *Shirley Ann Whitlow,* Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Madison Park Elementary School last year in the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

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No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

47. *L. W. Williams, Jr.,* Route 3, Box 417-P, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the ninth grade and has applied to attend Lee High School this year, requesting admission to the tenth grade.

Senior high school pupils in the area of this applicant's residence, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for this applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

48. *Clemmie Williams,* Route 3, Box 417-P, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the seventh grade and applied to attend Capitol Heights Junior High School, requesting admission to the eighth grade.

The desegregation plan as approved by this Court does not include the eighth grade.

The Defendants denied this application.

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49. *Jeffrey Williams,* Route 3, Box 417-P, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the seventh grade and applied to attend Capitol Heights Junior High School, requesting admission to the eighth grade.

The eighth grade is not included in the desegregation plan as approved by this Court.

The Defendants denied this application.

Submitted this 9th day of August, 1965.

HILL, ROBISON AND BELSER
Attorneys for Defendants.

Certificate of Service (omitted in printing)

Order as to Filing Objections

(Filed August 16, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The objections, if any, to the action taken by the Montgomery County Board of Education and the Montgomery County Superintendent of Education, pursuant to the order of this Court as that action is reflected in the report of the Montgomery County Board of Education and the Montgomery County Superintendent of Education filed herein on August 9, 1965, are ORDERED to be filed with this Court on or before August 24, 1965.

It is further ORDERED that any objections to said action as taken by the Montgomery County Board of Education and the Montgomery County Superintendent of Education as that action is reflected in the report filed August 9, 1965, be and the same are set for a hearing to commence at 2 p.m., August 26, 1965, in the United States District Courtroom, Montgomery, Alabama.

Done, this the 16th day of August, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Notice of Taking Depositions

(Filed August 19, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HON. BEN HARDEMAN,
U. S. Attorney
Post Office Building
Montgomery, Alabama

HON. JOHN DOAR,
U. S. Attorney
HON. JONATHAN B. SUTIN
United States Department of Justice
Washington, D. C.

HILL, ROBISON & BELSER
Attorneys and Counsellors At Law
26 South Perry Street
Montgomery, Alabama

WALTER MCKEE,
Superintendent
Montgomery County Schools
305 South Lawrence Street
Montgomery, Alabama

PLEASE TAKE NOTICE that the Plaintiffs, on the 23rd day of August, 1965 in the Office of Mr. W. H. Lewis, third

floor, Montgomery County Courthouse, Montgomery, Alabama, at 2:30 P. M., will take the deposition of Mr. Walter McKee, Superintendent of Schools of Montgomery County, Alabama, upon oral examination, pursuant to Federal Rules of Civil Procedure before Mr. W. H. Lewis, a notary public, or some other officer authorized by law to administer oaths.

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PLEASE TAKE FURTHER NOTICE that you are hereby required to produce upon such examination all records, tests, individual files and all other documents used by the Montgomery County Board of Education in acting upon the Applications for Transfer, a report of the action of said Board was filed in this case on the 9th day of August, 1965.

Done this 19th day of August, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Objections to Defendants' Rejection of Applicants for Transfer

(Filed August 24, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs in the above entitled cause, by and through their attorney of record, and object to the denial of the applications for transfer as set out in defendants' report to this court dated August 9, 1965, and as grounds for said objection assign separately and severally to each application for transfer the following:

1. That no valid reasons are assigned for the denial of said applications for transfer.

2. That no valid criteria are given for denying the applications for transfer.

3. That in processing and refusing to approve the applications for transfer and assignment, the defendants have subjected these Negro pupils to procedures and investigations which white children desiring to transfer from one white school to another are not subjected to, and to procedures and investigations which other Negro children desiring to transfer from one Negro school to another Negro school are not subjected to.

4. That in refusing to approve the applications for transfer and assignment, the defendants have denied to

plaintiffs and their class their constitutional right to receive an education on a non-discriminatory basis.

5. The defendants in failing to approve the other applications seek to only have token desegregation in the public schools of Montgomery County and to circumvent

this court's decree in this case and in the case of *Brown* vs. *Board of Education*, 347, U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686.

6. The criteria used by the Board were not uniformly applied to all students in making initial assignments to the Montgomery County Public Schools; that the criteria were instead applied solely to students seeking transfer from "Negro" to "white" schools; and that such application of the criteria denies Negro students equal protection of the laws secured to them under the Fourteenth Amendment of the United States Constitution as interpreted in decisions of both the Fifth Circuit Court and the United States Supreme Court.

7. Petitioners further allege that the rejected applicants have not been apprised of the standards and criteria of which formed the bases for the defendants' denial of the aforesaid applications.

8. Petitioners further allege that the action of the defendant, Montgomery County Board of Education, as shown in its report filed with the court on August 9, 1965, does not comply with the Order of this court dated May 18, 1965, which said Order approved said defendant's amended plan for desegregation.

9. Petitioners further allege that the action of the defendant, Montgomery County Board of Education, as shown in its report filed with the court on August 9, 1965, does not comply with said defendant's amended plan for desegregation.

10. The Alabama Pupil Placement Act has been unconstitutionally applied and therefore cannot properly be considered in determining pupil transfer applications.

11. The Board's report submitted fails to provide for either complete "free choice" throughout the system without limitation of the Pupil Placement Act, or for the abolition of dual zones in making initial assignments in the elementary, junior high, and high school grades. The Board should be required to replace the system of dual zone assignments with single geographic zones for all schools in the system, thereafter assigning, initially, all students residing in a zone without regard to race until

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capacity is reached.

12. The Board's present report is further objectionable because it fails to provide for desegregation of teachers, principals, and other administrative or educational staff personnel.

13. Defendants' report reflects that the criteria of the Pupil Placement Law have been applied so as to limit desegregation through restriction of the applicants' rights to free choice. (See Section V. D. 11., General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary

Schools, HEW, Office of Education, April 1964. Appendix.; see also, *Singleton* v. *Jackson Municipal Separate School District,* Fifth Circuit, No. 22527, 6/22/65; *Price* v. *Denison Independent School District,* Fifth Circuit, No. 21632, 7/2/65).

14. Because initial assignments to Junior High School and High School grades have been made on a racial basis, overcrowding in presently "white" schools has prevented applicants from exercising an effective free choice in the selection of a school, and also, unconstitutionally retarded the desegregation of several grades reached by defendants' plan.

15. The action of defendants as reflected by their report, violates plaintiffs' rights to attend schools in a desegregated system, in that the Board's action is taken in the context of a dual or segregated system of schools, which the board has not yet undertaken to abolish.

16. Applicants Austin (3), and Packs (26), should be allowed to apply to the closest school having a Seventh grade, which may be attended by pupils other than those of the race of the applicants.

17. Applicants Beamen (4), Boswell (5), Carter (11), Green (14), Nettles (23), Relf (28), Scales (32), Scott (34, 35), Seay (36), Whitlow (45, 46), all of whom applied to Capital Heights Junior High School have, in part, been denied an effective choice because initial assignments to said school have been made on a racial basis, thereby so limiting the available space that Negro pupils, residing closer to the school, are unable to effect transfer and hence desegregation.

18. The defendants can not use the overcrowding in white school as a valid reason for failing to accept Negro students in that the overcrowdedness is the direct consequences of a "feeder system" which system is based on race.

19. The defendants have assign as one of the reasons for failing to admit Negro students to white schools the fact that the route to the white school is more hazardous than the route to the Negro school. This is not a valid criteria for denying Negro applicants in that white children must cross equally as hazardous streets in route from their home to the white school.

20. The report shows on its face that the defendants are not making a good-faith effort to comply with the court's orders that, therefore, the court should reject that portion of the report which deny the applications for transfer.

WHEREFORE plaintiffs pray that the court will promptly set a hearing on plaintiffs' objections to the board's report and that upon such a hearing the court will enter an order:

1. Declaring that the Alabama Pupil Placement Law as applied to the applicants who were denied transfer unconstitutional and therefore null and void.

2. Directing the defendants to cease using the Alabama Pupil Placement Law in acting upon applicants for transfer.

3. Directing the defendants to permit the applicant, George Gregory Green, Jr. (15), to submit to the defendants his birth certificate and if said birth certificate shows that he will be six years old by the 2nd day of October,

1965, admit said applicant to Capitol Heights Elementary School.

4. Directing defendants to consider the applications of applicants Woodrow Austin (3), and Doris Jean Packs (26) to the closest school to their home having a seventh grade, which may be attended by pupils other than those of the race of the applicants.

5. Directing defendants to consider the applications of Gloria Jean Beamen (4), Eloise Boswell (5), Esau Carter (11), Belinda Joyce Green (14), Horace Nettles, III (23),

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Minerva Elizabeth Relf (28), Melvin Scales (32), Betty Jean Scott (34), Bill Scott (35), Sheryl D. Seay (36), Walter Jerome Whitlow (45), and Shirley Ann Whitlow (46), who had applied to Capital Heights Junior High School as applicants to Baldwin Junior High School or the junior high school which the white children in that community now presently attend; and after the defendants have considered said applications to said school to act favorably there upon.

6. Directing the defendants to approve all of the applications for transfer.

Plaintiffs further pray for such further relief as may be proper in the premises.

Respectfully submitted,

GRAY & SEAY
JACK GREENBERG
CHARLES JONES, JR.

Certificate of service (omitted in printing)

APPENDIX

GENERAL STATEMENT OF POLICIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 RESPECTING DESEGREGATION OF ELEMENTARY AND SECONDARY SCHOOLS

I. Applicability of Title VI of the Civil Rights Act of 1964 to Desegregation of Elementary and Secondary Schools

Title VI of the Civil Rights Act prohibits the extension of Federal financial assistance to any dual or segregated system of schools based on race, color, or national origin. To be eligible to receive, or to continue to receive such assistance, school officials must eliminate all practices characteristic of such dual or segregated school systems.

II. Methods of Compliance—General

Elementary and secondary schools or school systems may qualify for Federal financial assistance by:

A. Executing an Assurance of Compliance (HEW Form 441), if the requirements specified in III below are satisfied; or

B. Submitting a final order of a court of the United States for the desegregation of the school or school system which satisfies the requirements specified in IV below, together with an Initial Compliance Report (see VI below); or

C. Submitting a plan for the desegregation of the school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Civil Rights Act, as set forth in these policies (see V below); together with an Initial Compliance Report (see VI below); and

D. Implementing the Assurance, final court order or desegregation plan in good faith so as to effectuate the basic objective set forth in section 601 of Title VI of the Civil Rights Act:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

III. Methods of Compliance—Assurance of Compliance (HEW Form 441)

An Assurance of Compliance (HEW Form 441) that will qualify a school system for Federal financial assistance may not be executed by a school system in which:

A. The race, color, or national origin of pupils is a factor in their initial assignment, reassignment, or transfer to a particular school or class within a school; or

B. Teachers or other staff who serve pupils remain segregated on the basis of the race, color, or national origin of the pupils in a school; or

C. Any activity, facility or other service, including transportation, provided or sponsored by a school system is segregated on the basis of race, color, or national origin; or

D. There remain any other practices characteristic of dual or segregated school systems.

IV. Methods of Compliance—Court Orders

A. A school system subject to a final order of a court of the United States will be eligible for Federal financial assistance only if the order directs desegregation of the school system; it does not suffice if the order merely directs school authorities to admit certain named persons or otherwise fails to require the elimination of a dual or segregated system of schools based on race, color, or national origin.

B. School districts submitting a final court order should send official copies of the court order, together with an Initial Compliance Report as described in VI below, indicating the present state of compliance with the order and the school district's program for continued compliance.

V. Methods of Compliance—Plans for the Desegregation of School Systems

A. *Types of Desegregation Plans.*

A school system will be eligible for Federal financial assistance by submitting a desegregation plan providing for the assignment, reassignment, and transfer of pupils to or within schools on the basis of:

1. Geographic attendance areas, subject to the requirements of sections B and C below;

2. Freedom of choice granted to and exercised by the pupil and his parents or guardians, subject to the requirements of sections B and D below; or

3. A combination of geographic attendance areas and freedom of choice.

B. *Requirements Which All Desegregation Plans Must Satisfy.*

1. *Faculty and staff desegregation.* All desegregation plans shall provide for the desegregation of faculty and staff in accordance with the following requirements:

a. *Initial assignment.* The race, color, or national origin of pupils shall not be a factor in the assignment to a particular school or class within a school of teachers, administrators or other employees who serve pupils.

b. *Segregation resulting from prior discriminatory assignments.* Steps shall also be taken toward the elimination of segregation of teaching and staff personnel in the schools resulting from prior assignments based on race, color, or national origin (see E4b below).

2. *Nondiscrimination in other school affiliated services, facilities, activities and programs.* All desegregation plans shall provide for the elimination of discrimination based on race, color, or national origin, with respect to services, facilities, activities and programs sponsored by or affiliated with the schools of the system. If busing or other transportation is furnished or sponsored by the school or school system, the plan shall call for its provision without discrimination based on race, color, or national origin.

3. *Preparation of pupils, teachers, staff and community for desegregation.* All desegregation plans shall contain specific information as to actions that will be taken to prepare pupils, teachers, staff personnel and the community for the changes which will be involved in desegregating the school system.

4. *Notice.*

a. All desegregation plans shall provide for their publication in a conspicuous manner in a newspaper having general circulation in the geographic area served by the school system, reasonably in advance of the time for any action which may be taken by pupils under the plan;

b. All desegregation plans shall provide for notification to pupils currently enrolled in the school system and to their parents or guardians in sufficient time to enable them to understand and take advantage of their rights to initial assignment, reassignment or transfer for the coming school year, and for the mailing of such notices to parents or guardians of pupils then enrolled or for their distribution in any other manner that will assure their receipt by parents or guardians;

c. All desegregation plans shall be accompanied by sample copies of the notices to be given respecting each of the following categories:

(1) The initial assignment of pupils intending to enter schools of the system for the first time;

(2) Initial assignment of pupils intending for the first time to enter a school of higher level after having completed a school of less advanced level; and

(3) The reassignment or transfer of pupils for the forthcoming school year.

5. *Subsequent court orders.* If, after submission of a desegregation plan, a final order of a court of the United States is entered calling for the desegregation of the school or school system covered by the plan, the plan shall be revised, if necessary, to meet the requirements of the court order and of any future modification of the order.

6. *Performance as a test of plan.* The Commissioner of Education may from time to time redetermine the adequacy of any desegregation plan to accomplish the purposes of the Civil Rights Act.

C. *Plans Based on Geographic Attendance Areas.* A desegregation plan which proposes to assign, reassign or transfer pupils on the basis of geographic attendance areas shall contain provisions that will meet the following requirements as to all grades covered by geographic zoning:

1. *Attendance zones.* Racially separate attendance zones shall be abandoned entirely and each attendance zone shall be part of a single, nonracial system of attendance zones. Zone lines shall be drawn to follow the natural boundaries or perimeters of compact areas surrounding particular schools.

2. *Initial assignment.* All pupils shall be initially assigned to the school for the geographic attendance zone in which they reside.

3. *Attendance outside zone of residence.* The rules or practices under which pupils are reassigned or permitted to transfer to a school outside their zone of residence shall not take race, color, or national origin into account.

4. *Right to attend in zone of residence.* At the beginning of any school year any pupil attending a school outside his zone of residence shall have the right to transfer to and attend the school in his zone of residence.

5. *Notice.* Each pupil and his parents or guardians shall receive notice of the school to which the pupil is assigned which satisfies the requirements of B4 above.

D. *Plans Based on Freedom of Choice.*

The responsibility to eliminate segregation rests with the school authorities and is not satisfied by rules and practices which shift the burden of removing discrimination to the class or classes of persons previously discriminated against. Desegregation of a school system may, however, be initiated by a "free choice" plan containing provisions that will meet the following requirements as to all grades covered by free choice:

1. *Adequate opportunity to make a choice.* No pupil shall be assigned, reassigned or transferred without being given once annually, at an appropriate time, an adequate prior opportunity to make an effective choice of school.

2. *Pupil placement laws.* The criteria of pupil placement laws or similar statutes rules or practices shall not be used to limit desegregation through restriction of any pupil's right to free choice.

3. *Initial assignment: lowest elementary grade levels.*

a. Announcement of the procedures for initial assignment of pupils to the lowest elementary grade level (including preschool and kindergarten classes where available) shall be made by full notice in the press.

b. The times and places for, and manner of, preregistration and enrollment shall be fixed so that a free choice may be made easily by each pupil.

c. If overcrowding will result at a particular school from the choices made, initial assignment shall be made either by giving preference to the pupils residing closest to the school or on the basis of non-racial attendance zones. If no choice is made, they shall be assigned to the school nearest their homes or on the basis of non-racial attendance zones.

4. *Initial assignment: lowest grade of junior high, high or other school above elementary level.*

a. Announcement of the initial assignment of pupils to the lowest grade of junior high, high or other school above the elementary level shall be made by individual notices to each pupil and his parents or guardians. The notices shall be furnished reasonably in advance (as specified in the plan) of the time for filing the form for exercising choice of the school next to be attended, together with copies of the form. Copies of the notice and the form shall be submitted together with the plan.

b. If overcrowding will result at a particular school because of the choices made, initial assignments shall be made either by giving preference to the pupils residing closest to such school or on the basis of non-racial attendance zones.

c. Pupils may either be required to make a choice of schools or be initially assigned, if they do not make a choice, to the school nearest their homes, or on the basis of non-racial attendance zones.

5. *Reassignment or transfer: all other grades to which freedom of choice policy applies.*

a. In all other grades to which the freedom of choice policy applies, every pupil shall be informed by individual notice addressed to himself and his parents or guardians: (1) of his right to transfer to a school of his choice, and (2) where copies of the form for exercising this transfer right may be readily obtained in the school and elsewhere.

b. If overcrowding will result at a particular school because of the choices made, the pupil shall either be given preference over pupils residing farther from the school or shall be permitted to attend another school of his choosing within a reasonable distance of his residence.

6. *Initial assignment: pupils entering school system for first time or who become eligible to attend some other school in the system by reason of change of residence.* Any pupil who either enters the school system for the first time or becomes eligible to attend some other school in the system by reason of a change of residence shall be initially assigned without regard to race, color, or national origin.

7. *Transportation.* The exercise of free choice shall not be restricted by transportation practices. Transportation shall be provided to pupils under a free choice policy on the same basis as it is provided to other pupils attending the same school.

8. *Notice.* All notices to pupils and their parents or guardians respecting the initial assignment, reassignment or transfer to or within schools shall:

a. State simply and clearly the applicable rules and administrative practices regarding the rights which the desegregation plan accords pupils with respect to initial assignment, reassignment, or transfer, to or within the schools;

b. Give the times, dates, and places at which pupils, or their parents or guardians may exercise their rights under the desegregation plan; and

c. Include an assurance that school personnel will neither favor nor penalize any pupil because of the choice he makes in the exercise of his rights under the desegregation plan.

E. *Rate of Desegregation.*

1. Every school system which submits a plan that fails to provide for the desegregation of every grade in all the schools within its system by the beginning of the school year 1965–1966 must sustain the burden of justifying the delay and must include in its desegregation plan a time schedule for such desegregation.

2. The fall of 1967 is set as the target date for the extension of desegregation to all grades of school systems not fully desegregated in 1965–1966 as a qualification for Federal financial assistance.

3. On or before January 31, 1966, the Commissioner of Education may modify the policies respecting desegregation of elementary and secondary schools in order to determine eligibility for Federal financial assistance in the 1966–1967 school year and thereafter.

4. Every school system beginning desegregation must provide for a substantial good faith start on desegregation starting with the 1965–1966 school year, in light of the 1967 target date.

a. Such a good faith start shall normally require provision in the plan that:

(1) Desegregation will be extended to at least four grades for the 1965–1966 school year; the grades covered must include the first and any other lower grade, the first and last high school grades, and the lowest grade of junior high where schools are so organized;

(2) Any pupil newly enrolled in the school system or in any school within the system (e.g., who has newly established a residence within the district) shall be enrolled in and assigned to a particular school without regard to race, color, or national origin;

(3) No pupil shall be publicly supported in a school outside the school district unless such support is available without regard to race, color, or national origin to all pupils residing in the school district; and in any case no student shall be required to attend a school outside the school district in order to maintain racial segregation or minimize desegregation in a school within the district;

(4) Any pupil attending a school to which he was originally assigned on the basis of his race, color, or national origin shall have the right, irrespective of whether or not the grade he is attending has been desegregated, to transfer to another school in order to take a course of study for which he is qualified and which is not available in the school he is attending;

(5) Any student attending any grade, whether or not fully desegregated, at a school to which he originally was assigned on the basis of his race, color, or national origin shall have an opportunity, subject to the requirements and criteria applicable equally to all students without regard to

race, color, or national origin to transfer to any other school in which he originally would have been entitled to enroll but for his race, color, or national origin; and

(6) Steps will be taken for the desegregation of faculty, at least including such actions as joint faculty meetings and joint inservice programs.

b. In exceptional cases the Commissioner may, for good cause shown, accept plans which provide for desegregation of fewer or other grades or defer other provisions set out in 4a above for the 1965–1966 school year, provided that desegregation for the 1965–1966 school year shall extend to at least two grades, including the first grade, and provided that the school districts, in such case, shall take into account the steps which would be required to meet the 1967 target data.

VI. Compliance Reports

A. *General Requirements.* All recipients of Federal financial assistance are subject to the requirements respecting compliance information set forth in section 80.6 of the Departmental Title VI Regulations.

B. *Initial Compliance Report.* If an Initial Compliance Report is required, it shall contain sufficient detailed information to provide an accurate picture of past and present racial conditions in each school district. Precise, up-to-the-minute statistics are not required. The material furnished should be what fair-minded school officials believe to be true and what reasonable men would think necessary for a rational appraisal of racial practices in the system. The following list, not intended to be exclusive, suggests the kinds of information that should be covered by an Initial Compliance Report:

1. A racial breakdown of the school-age population residing in the district by attendance zone;

2. The racial distribution of pupils, by school, throughout the system;

3. The racial distribution of teaching and staff personnel, by school, throughout the system;

4. Maps, which need not be of professional quality, where useful or necessary to demonstrate such things as school locations, attendance zones, or school bus routes;

5. Past and present rules and practices for the initial assignment, reassignment, and transfer of pupils within the system; and

6. The status of appeals or other pending proceedings, if any, if a court order for desegregation is submitted.

C. *Subsequent Compliance Reports.* Subsequently submitted compliance reports may refer to previous reports and should report with the same scope and detail on developments since the last previous report.

VII. Definitions—Initial Assignment, Reassignment and Transfer

As used herein:

A. The term *initial assignment* means the assignment to a particular school in the school system of any pupil who:

1. Is to attend preschool, kindergarten, or first grade; or

2. For the first time enters a school of higher level (such as junior high or high school) after having completed a school of less advanced level; or

3. For the first time enters the school system at any level; or

4. Becomes eligible, or would become eligible, aside from considerations of race, color, or national origin, to attend some other school in the school system by reason of a change of residence.

B. The term *reassignment* means the assignment of a pupil to the school he currently attends for an additional period of time.

C. The term *transfer* means the assignment of a pupil to a school of the same level other than the one he currently attends (e.g., transfer from one elementary school to another).

VIII. Alternative Administrative Procedures

If an administrative procedure provided for herein is not administratively feasible in a particular situation, the Commissioner may accept an alternative procedure if he determines that it will accomplish the same purpose.

April, 1965.

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Objections of Amicus Curiae to Defendants' Rejection of Applicants for Transfer

(Filed August 24, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, as Amicus Curiae herein, does not object to the action taken by the Montgomery County Board and Superintendent of Education in rejecting the applications of Negro students for transfer where the grade to which the transfer is requested is not included in the Court's orders of July 31, 1964, and May 18, 1965.

The United States otherwise objects to the action taken by the Montgomery County Board and Superintendent of Education, as indicated in their report to the Court dated August 9, 1965, rejecting 31 out of 49 applications made by Negro students for transfer and assignment for the coming school term, September 1965.

The United States objects to the rejection of George Gregory Green, Jr. for enrollment in the first grade in that the failure of his parents to provide a birth certificate to the School Board is not sufficient reason for arbitrarily assigning him to a Negro school.

The United States objects to the rejection of the other Negro students listed in the report to the Court for the following reasons:

(a) The imposition of any restricting criteria in acting upon applications of Negro students for transfer and as-

signment tends to perpetuate assignments which were originally based on race.

(b) The limited capacity of a school to which transfer is sought cannot be used to deny applications submitted by Negro students unless white students who attend that school live closer than the Negro students requesting transfer

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thereto. Prior assignments to schools, based on race, should not be considered in determining priority in Negro applicants and white students.

(c) The Negro students who requested assignment to schools which do not provide the grade level work required by those students were not given an opportunity to make a second choice.

CHARLES W. QUAINTANCE
Attorney
Department of Justice

Certificate of Service (omitted in printing)

Order

(Filed August 27, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the order of the Court made and entered herein on August 16, 1965, the objections of the United States and the plaintiffs to the action taken by the Montgomery County Board of Education and the Superintendent of Education of said county as that action is reflected in their report of August 9, 1965, were heard on August 26, 1965.

Upon consideration of said objections and the evidence presented in support thereof and in opposition thereto, this Court finds and concludes that in some respects the objections are well taken and in other respects the objections are to be overruled; specifically, the action of the defendants in denying the requested transfers of Woodrow Austin, Gloria Jean Beamen, Eloise Boswell, Esau Carter, Belinda Joyce Green, George Gregory Green, Jr., Hattie Bell Harper, Horace Nettles, III, Doris Jean Packs, Mary Estella Perry, Minerva Elizabeth Relf, Woodrow C. Sadler, Earnestine Scales, Melvin Scales, Betty Jean Scott, Bill Scott, Sheryl D. Seay, Willis Tolliver, Jr., Lennon Whitlow, Jr., Andrew Russell Whitlow, Major Eugene Whitlow, Walter Jerome Whitlow, Shirley Ann Whitlow, Clemmie Williams, and Jeffrey Williams, did not violate the opinion and decree of this Court of July 31, 1964. The basis for

denying the transfer applications of each of these individuals was not by reason of any policy, practice, custom and usage of maintaining and operating a compulsory biracial school system in Montgomery County, Alabama; the denial of the transfers of these individuals was through the application of acceptable criteria. The action of the Board in denying the transfers to these applicants is, therefore, affirmed. The objections as filed by the plaintiffs and the United States to the rejection of these applicants for transfer are ORDERED to be and each is denied.

As to the applications for transfer of Delores Rosetta Boyd, Janice Eileen Caple, Arlam Carr, Jr., John Harrison McCain, Joan Mastin and Patricia Lee Oliver, this Court finds that the defendants, in processing and refusing to approve the applications of these individuals for transfer and assignment, subjected these Negro students to procedures to which white children desiring to transfer from one school to another in the Montgomery County school system were not subjected. The defendants, in refusing to approve the applications of these students, applied criteria not uniformly applied to all students, but, instead, applied criteria relating solely to Negro students seeking transfer from "Negro" to "white" schools in the Montgomery County school system; the use and application of such criteria denies these Negro students equal protection of the law secured to them under the Fourteenth Amendment to the Constitution of the United States and denies these Negro students of their rights as decreed by this Court on July 31, 1964. It is, therefore, the ORDER, JUDGMENT and DECREE of this Court that the applications for transfer of these students heretofore denied by the defendants, be approved. It is further ORDERED that the objections by the plaintiffs

and the United States to the denial of said applications be and each is sustained.

It is the further ORDER, JUDGMENT and DECREE of this Court (1) that the defense take immediate and necessary steps to advise each of the following that his or her application for transfer has been accepted and (2) that the defendants take the necessary steps toward processing the applications of these students for admission into Sidney Lanier High School:

Delores Rosetta Boyd	John Harrison McCain
Janice Eileen Caple	Joan Mastin
Arlam Carr, Jr.	Patricia Lee Oliver

It is further ORDERED that the defendants take immediate and appropriate action toward advising each of the students, and parents, whose application was approved for transfer by said defendants as said approval is reflected in the report of the defendants in this Court dated August

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9, 1965, and filed in this Court on said date.

From the evidence in this case and from the history of this case as known by the Court, the defendant Board and Superintendent have complied with and are continuing to comply with the applicable law as decreed by this Court on July 31, 1964. The contention on the part of the plaintiffs, the effect of which is that these defendants have acted in bad faith to the point that the Alabama Pupil Placement Law by its application on the part of these defendants should be declared unconstitutional, is not well taken. That

objection and request on the part of the plaintiffs is ORDERED to be and the same is hereby denied.

The action of the defendants as set out in their report to this Court dated August 9, 1965, is in all other respects ORDERED to be and is hereby affirmed.

Done, this the 27th day of August, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

Memorandum Transcript

(Filed September 15, 1965)

TO IDENTIFY PLAINTIFFS' EXHIBITS 4, 5, AND 6 ADMITTED AT HEARING IN MONTGOMERY, ALABAMA, AUGUST 26, 1965, IN ABOVE CASE.

(TO IDENTIFY PLAINTIFFS' EXHIBITS 4 AND 5, FROM REDIRECT EXAMINATION OF WALTER T. MCKEE BY FRED D. GRAY)

* * * * *

Q. I show you, Mr. McKee, a list which has just been handed me by Mr. Guy in response to a subpoena; there is a student who has applied for this year to Lanier.

Mr. Gray: Mark this, please.

The Clerk: Plaintiffs' Exhibit number 4 for identification.

Q. I ask you to look at that preregistration card and tell us the address of that child, as indicated on that application? A. Well, of course, this address on here is 150 South Street.

Q. All right; now, South Street—isn't it a fact that 150 South Street is nearer to Booker Washington than to Lanier? A. I would have to look on the map; I don't know exactly where South Street is.

Q. I show you Plaintiffs' Exhibit 7. A. Now, I would also like to point out that these are temporary registrations here; of course, when that child actually comes to school and fills out a permanent registration card, of course, there may be other factors that might be checked.

Q. Scott—South Street is—Union, McDonough, High, Grove—here is South Street, if you will notice. A. Well, I don't know how far—what—where—which way 150 would be, have to have a City Directory.

Q. It would be approximately near Court Street, it is one block from the other end of it. A. Well, let's see, now; Lanier would be where?

Q. Lanier is down here at Fairview. A. It is right here, isn't it?

Q. And Booker Washington is— A. It might be; I don't know.

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Q. —is right here? A. I would have to measure it; it is not a whole lot of difference there.

Q. It appears to be closer to Booker Washington, doesn't it? A. Well, I couldn't say exactly, but it would depend on—it's—it's within the proximity, I would say.

Q. Let me show you another one, sir; it may be in one exhibit.

The Clerk: Plaintiffs' Exhibit number 5 for identification.

Q. I show you Plaintiffs' Exhibit 5 for identification purposes, which has the name of several prospective students, one living at 1225 Bell Street, 610 Clayton Street, 610 Clayton Street, and 1222 Bell Street, and ask you if you will look at those, and referring to the map in terms of their distance from their residence to Carver and their distance to Lanier, and tell us which school do they live nearest; Bell Street is in this area, Clayton is right in here? A. Well, I would—I would think—

Q. Carver would be— A. Carver is over here on Fairview Avenue area; would think they would live closer to Lanier.

Q. Well, Lanier is on Fairview, too, isn't it? A. No, Lanier is about three blocks; Sears, Roebuck and all that is before you get to Fairview. Here is Lanier, back here, right here off of Marshall.

Q. This is an address— A. Carver is over here.

Q. It is an address on Bell Street, and— A. I would say it would be probably a little closer to Lanier; now, of course, the way—the way you have got to come, you have got to come back over here and cross those railroads to get here, come back.

Q. Coming—coming from Bell Street to Oak Street and straight out Oak Street, you would be to Fairview, you would be to Carver? A. You have got to come on back in that way to get across that bridge, yeah.

Q. Now, let me refer you to, sir, if you will, our old map, which we introduced in evidence sometime ago.

Mr. Robison: Have you offered those as an Exhibit?

Mr. Gray: We offer these in evidence.

The Court: 4 and 5.

Mr. Robison: If the court please, we would like to have those records back; we have no objection to copies being put in. Want our records.

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The Court: It will be admitted; leave granted to withdraw them and substitute copies.

* * * * *

(To identify Plaintiffs' Exhibit 6, from Direct Examination of Meade Guy by Fred D. Gray)

* * * * *

Q. And as Principal of Sidney Lanier High School, have you received any preregistration cards for persons moving into the Montgomery area? A. We made a tentative registration for those who have applied and have been eligible to apply.

Q. Will you tell us how the tentative registration operates, the procedure? A. We have the student and parents come in for a conference. We sit down with them and discuss courses they have had, where they have attended school before, what their choice of courses would be for the coming year, where they live, and these generally would be the things we would discuss.

Q. And have you had such conferences with some people during this summer? A. Yes, we have.

Q. Approximately how many? A. I don't handle all of these; we have some other people there who do; I would say probably two hundred to two hundred fifty.

Q. Now, were all these people that were processed the way you indicated, were they all white students? A. Yes.

Q. I show you, sir, Plaintiffs' Exhibit 6, ask you to look through those and tell us whether or not that is at least a portion of the persons who have preregistered at Lanier for this fall? A. Yes, this would be the majority of them.

Q. And those are your records you brought as a result of the subpoena which was served upon you? A. That is correct.

Q. Now, those persons, the processing of those applications did not go through the Board of Education, did they? A. No, they did not.

Q. And based on your preregistration, will those persons be admitted if they present themselves in September? A. Well, this will depend on a number of things; for one thing,

many of these people did not have records, official transcripts, when they applied to us; for another thing, we do not make a careful check of the area where these people live, as far as their address, it is not—we do not require the parents' signature and testimony from them to the fact that this is correct information; it is a tentative enrollment.

Q. So subject to getting their transcript from other schools, and subject to—and when you say their address, you mean either if they don't—if they don't live in the correct zone, ordinarily, what school would they attend? A. Well, these, of course, come from the areas that are general—that we consider to be our feeder schools, generally.

Q. Uh, huh. A. In other words, if a student applies to us from one of these areas, we ordinarily would accept that person if everything else were in order.

Q. Now, are those records a part of your feeder records, or are those basically people who are moving into the area for the first time? A. These are basically those who are coming into the area for the first time.

Mr. Gray: That's right. We offer these in evidence, Plaintiffs' Exhibit 6.

Mr. Robison: Now, your honor, we have no objection to that, but I again request that they be furnished to us right away, because they are working on them today; we had to get them up this morning, and we would like to withdraw those this afternoon, and with permission to him to copy them any time he wants to at the school.

Mr. Gray: We have no objection, your honor, as long as they are available for the court to see them to make such disposition as needed.

Mr. Robison: That is perfectly all right, but—

The Court: As I understand, you are agreeing that the original Exhibit be withdrawn without copies being made; is that what you are agreeing to?

Mr. Gray: We are agreeing that copies may be substituted; yes, sir.

Mr. Robison: That's right.

The Court: Who is going to make them, two hundred and fifty copies, this afternoon? You all make arrangements about that, too.

Mr. Gray: It is my understanding—

Mr. Robison: Your honor, if we had known what he wanted, we would have tried to make copies, or made them available to him to make copies, but if the school is to function out there, it is necessary that we have them at the earliest possible date that the court will make them available. They were working on them today.

The Court: Is there any specific information in them that the court needs other than—other than what he has already testified to?

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Mr. Gray: Nothing other than the addresses, your honor; it would show particular addresses and—

The Court: You want to read the addresses off after the hearing to the reporter and then let him take them on back without copies being made?

Mr. Robison: We would appreciate it, your honor.

Mr. Gray: Yes, sir.

The Court: Then Plaintiffs' Exhibit 6 will not be admitted in evidence; you can read the addresses to the reporter—

Mr. Gray: Yes, sir.

The Court: —after the hearing.

* * * * * *

GLYNN HENDERSON,
Official Court Reporter.

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PLAINTIFFS' EXHIBIT NUMBER 4, FROM HEARING AT MONTGOMERY, ALABAMA, AUGUST 26, 1965.

(Names and addresses only, as dictated from Exhibit at conclusion of hearing)

Gwendolyn Sanders,
150 South Street.

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PLAINTIFFS' EXHIBIT NUMBER 5, FROM HEARING AT MONTGOMERY, ALABAMA, AUGUST 26, 1965.

(Names and addresses only, as dictated from Exhibit at conclusion of hearing)

Helen Loraine Holmes,
1425 Bell Street.

Rebecca (Becky) Echlund,
610 Clayton.

Elaine Echlund,
610 Clayton.

Jacob E. Barnhill, Jr.,
1222 Bell Street.

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PLAINTIFFS' EXHIBIT NUMBER 6, FROM HEARING AT MONTGOMERY, ALABAMA, AUGUST 26, 1965.

(Names and addresses only, as dictated from Exhibit at conclusion of hearing)

George C. Pittinger,
17 Mildred Street.

Howard Hoylt Ratliff,
502 Holcombe Street.

Mary Ann Holmes,
142 Wade Street.

Michael G. Mills,
3921 Oak Street.

James M. Miller, Jr.,
2229 Carter Hill Road.

Linda Faye Bolton,
321 E. Jeff Davis.

Sarah Edna Brown,
Route 6, Box 243.

Lincoln Daniel Brown,
Route 6, Box 243.

Michael Devlin Make,
1063 Druid Hills.

Altin Goings Stanley,
125-C, Route 6.

Harry Harshman Bruce,
3534 Norman Bridge Road.

James Cary Abernathy,
539 South Perry Street.

Mary Mallory Adams,
1115 South Court Street.

Ronald Trevor Adams, III,
1115 South Court Street.

Ruby Lemerle Adkins,
22 Davis Drive.

Debra (Debbie) Anderson,
3943 Princeton.

Linda Anderson,
3943 Princeton.

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Alice Anne Bacon,
Quarters 4-C, Maxwell Air Force Base.

William Jackson Barton, Jr.,
3444 Warrenton Road.

Robert Beatow,
711 Briarcliff Road.

Robert Joseph Benschine,
2503 Jasmine Road.

Angeline Bivens,
695 Cloverdale Road.

Gwynn Boardman,
100 Pocahontas Road.

Milton Casey Bolt,
Quarters 305, Maxwell Air Force Base.

Alexis L. Braddy,
Quarters 605-B, Maxwell Air Force Base

Shannan Lee Braddy,
Quarters 605-B, Maxwell Air Force Base.

Judith Lynne Braucher,
3567 Berkley.

David Lee Brown,
328 Tanglewood Drive.

Margaret V. Bruenner,
1335 Avalon Lane.

Christine (Chris) Burkett,
2719 Newport Road.

Vincent Arthur Campbell,
121 Shadyside Lane.

Lu Anne Laurine Cardray,
332 Mooreland Road.

Lynn Carter,
3490 Cloverdale Road.

Darrell Carter,
Route 3, Box 260-C.

Jean Carver,
2105 Beverly Drive.

Agatha Grace Catechi,
3320 Montezuma Road.

Mary Catechi,
3320 Montezuma Road.

Ann Grayson Chalker,
2758 Argyle Road.

William Gerald Chalker,
2758 Argyle Road.

Colleen Cordelia Chapman,
2115 College Street.

Leslie Linder Chapman,
1215 College Street.

Nancy Ann Coker,
2537 College Street.

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John Wayne Collett,
3103 Boxwood Drive.

Katherine Cook,
1439 Gilmer Avenue.

Cid Diane Copeland,
520-B Magnolia.

Charlotte Dianne Cottingham,
160 Jones Street.

Carroll Earl Craig,
3248 Braeburn.

Rodney Scott Crum,
2198 Beverly Drive.

Donna Mae Culbertson,
Route 6, Box 196.

Cynthia Ann Daries,
3107 North Colonial Drive.

Carolyn Gay Darnold,
2192 Beverly Drive.

Sharon Lee Denniston,
301 South Anton Drive.

Carol Lee Doti,
3528 Cambridge Road.

Toni Ann Dunagan,
3214 Southmont Drive.

Patricia Dwyer,
34 Spring Valley Road.

Susan Dwyer,
34 Spring Valley Road.

Jeanne Elizabeth Edwards,
2240 Country Club Drive.

Richard Parker Evans,
1415 East Fairview Avenue.

Clyde Preston Evely,
1365 Avalon Lane.

Nancy Carol Farkapa,
3385 Gilmer.

Sophrenia Jean Franklin,
3399 Southmont Drive.

James Alan Fregin,
Quarters 6110, Maxwell Air Force Base.

William Michael Fullilove,
523-C, Maxwell Air Force Base.

Keith Calvin Gatchell,
2191 Beverly Drive.

Gordon Ray Gauthier,
327 Truett Drive.

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Gregory Dean Gauthier,
327 Truett Drive.

Belinda Jane Gehle,
Quarters 605-C, Maxwell Air Force Base.

Suellen Gehle,
Quarters 605-C, Maxwell Air Force Base.

Terri Lynn Gildow,
Route 4, Box 325-B, Seibels Road.

Laurinda Jean Garmorn,
1262 Breckinham Drive.

Barbara Jean Grossman,
3525 Bridlewood Drive.

Nancy Elaine Gwynn,
2733 South Colonial Drive.

Richard Paul Gwynn,
2733 South Colonial Drive.

Lynda Dale Hakala,
Route 4, Box 2220, Woodley Road.

Debbie Hall,
Quarters 536-A, Maxwell Air Force Base.

Marla Hansen,
3449 South Court.

Hans Hardin,
4251 Sunshine Drive.

Harrison Howell Dodge (Hal) Heiberg,
3114 Woodley Road.

Caren Ragnhild Heiberg,
3114 Woodley Road.

John Richard Heninger,
2618 Wildwood Drive.

David Horne,
2711 Fisk Road.

Stephen Horne,
2711 Fisk Road.

Cornelius (Neil) Jackson,
2782 Baldwin Brook Drive.

Karen Elaine Johnson,
27-B, Turner Boulevard, Maxwell Air Force Base.

Mary Mamston Johnson,
3623 Cambridge Road.

Ralph Ray Jones, Jr.,
1119 Buckingham.

W. Roger Joyce,
1743 Croom Drive.

Katherine Leslie Keheley,
1513 South Perry Street.

Mary Katherine Keeler,
3101 North Colonial Drive.

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Karen Rose Kennealy,
Quarters 603-C, Maxwell Air Force Base.

Dale Boyd Kimsey,
1211 South Perry Street.

Melbourne Kimsey, II,
1211 South Perry Street.

J. Bryan Lauson,
3043 North Colonial.

Charles Michael Law,
1101 Westmoreland.

Shari Lea Lane (McEleath),
3547 Southmont Drive.

John Kenneth Lerohl,
3431 Gilmer Court.

Karen Dodd Lerohl,
3431 Gilmer Court.

K. Richard Lindow, Jr.,
Quarters 514-D, Maxwell Air Force Base.

Gary Alan Long,
2638 Fisk Road.

John Terrance (Terry) Lonsdale,
3699 Berkley Drive,

Cheryl Lynn Cardray,
332 Mooreland Road.

Candance McCulluch,
Quarters 609-B, Maxwell Air Force Base.

John Malcolm McInnis, Jr.,
2169 Mona Lisa Drive.

William Arnold McKee,
248 South Boulevard.

Marilyn McKinney,
2711 Argyle Road.

Thomas A. McKinney,
2711 Argyle Road.

Mary Lee MacWilliams,
3474 Gilmer Avenue.

Nancy Ann Macomber,
1122 Barley Drive.

George Mainzer,
1109 South Perry.

David Alan Mann,
702 Lynwood Drive.

Pamela Ann Massey,
4433 Wright Street.

Constance Webber Mayock,
329 Cullen Drive.

Jake Mendel,
3507 Thomas Avenue.

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John A. Merlo,
1113 Goode Street.

Thanas McDowell Mish,
6 Prado.

Lucy Monroe,
2405 College Street.

Rosa Linda Montemayor,
1376 Devonshire Drive.

Jacqueline Jo Morris,
3958 Thomas Avenue.

Ann Murphy,
Quarters 607-C, Maxwell Air Force Base.

Karen Jean Murphy,
651 Wesley Drive.

Bill Anthony Myers,
Quarters 614-C, Maxwell Air Force Base.

Jane Esther Nemetz,
22 E. Fairview Avenue.

Judith Ann Nemetz,
22 E. Fairview Avenue.

Madeline Bransford Nichols,
1429 Gilmer Avenue.

Pauline Marie Ann Nolan,
Quarters 604-A, Maxwell Air Force Base.

Wilda Maria O'Steen,
3449 Wilmington Road.

Mia Oxley,
3106 North Colonial Drive.

Linda Marcelle Parker,
2764 South Colonial.

Jill Ellen Patterson,
Quarters 423, Maxwell Air Force Base.

Hilliard Oyers (Kip) Peavy, III,
142 North Haardt Drive.

Jacqueline Lee Perez,
19 Howard Street.

Cristine Teckla Peterson,
3461 Princeton Road.

Pryor Harris Plumlee, III,
3729 Princeton Drive.

Angela Paulos,
379 Larchmont Drive.

Gaby Marlene Prado,
3620 Kelly Lane.

Avery Lynn Price,
3531 Berkley Drive.

Robert Lyson-Proctor,
3050 Boxwood Avenue.

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Michele Christine Pugh,
3213 North Colonial Drive.

Penny Therese Quinn,
2168 Mona Lisa Drive.

Pamela Ann Ratti,
511-C, Maxwell Air Force Base.

Paul Arthur Ratti,
511-C, Maxwell Air Force Base.

Brenda Joyce Ray,
1 Stuart Street.

Daniel Benge Reid,
100 Spring Valley Road.

Z. O. Riddle, III,
3799 Maclamar Road.

Elizabeth Ann Roberson,
133 South Boulevard.

Kevin Herbert Roche,
1102 Glen Gratton.

Elizabeth Wells Romanek,
3444 Princeton Road.

Michael Anthony Rowan,
4223 Amherst Road.

Jennie Elizabeth Schultes,
43-D, Maxwell Air Force Base.

Edward Durden Sellers,
Apartment 15-D, The Prado.

Robert Jack Shell, II,
3334 Carter Hill.

Susan Ursula Shimonkevitz,
2238 Rosemont Drive.

Randal Eugene Shiver,
2150 Mona Lisa Drive.

Ronald E. Showalter,
Quarters 224, Inner Circle, Maxwell Air Force Base.

Judy Elaine Smith,
3719 Southmont Drive.

Sandra Smith,
3131 Woodley Terrace.

Suzanne Meredith Smith,
3112 Fernway Drive.

Kerry Jean Smothers,
3601 Audubon.

Andrew Lytle Stergiades,
509 Briarcliff Road.

Glen W. Stockton, Jr.,
3121 Partridge.

Joan Burnice Suggs,
Route 1, Box 286.

Katherine Sundstrom,
2657 Burkelaun Drive.

Charles William Sydnoy,
710 East Edgemont Avenue.

Lawrence Joseph Taylor,
Quarters 405, Maxwell Air Force Base.

Gregory James Trammell,
2757 South Colonial.

Rick Cullen Trammell,
2757 South Colonial Drive.

Patricia Underwood,
Quarters 221, Maxwell Air Force Base.

Guy R. Van Sickle,
2650 Fisk Road.

Michele Veiluva,
2718 Argyle Road.

Nancy Ellen Vickery,
1704 South Court Street.

Rodney Waltman,
Route 6, Box 2.

Maura Ward,
2511 College Street.

Jo Ann Watson,
116 Spring Valley Road.

Penelope Anne Wayne,
3513 Audubon Road.

Ronald W. Weaver,
Maxwell Air Force Base.

Diane Carol Wells,
1116 Woodbridge Drive.

John Robert (Bob) Whetstone,
254 South Boulevard.

Glenn Robert Williams,
623 Iris Lane.

Joyce Young,
350 Larchmont Drive.

Belinda Ann Sapponi,
2516 Ashlawn Drive.

Robert Lewis Zeigler,
737-A, Maxwell Air Force Base.

Robert L. Zoerb,
Route 1, Box 327.

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Defendants' Plan for Desegregation

(Filed January 14, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants in the above entitled cause, and, as required by the Order of this Court dated May 18, 1965, submit the following complete plan for desegregation:

1. *Assignments*:

All existing school assignments shall continue without change except when transfers or assignments are authorized by the Superintendent of Education of Montgomery County, Alabama under the supervision and review of the Board of Education of Montgomery County, Alabama.

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Pupils entering any grade to which this plan shall have become applicable and pupils otherwise entering the school system for the first time when this plan shall have become applicable to the grade entered, shall be assigned without regard to race as is provided hereinafter.

2. *Transfer and Assignment*:

A. (1) Parents or legal guardians of pupils residing in Montgomery County, Alabama prior to March 31, of each year, in grades to which this plan shall have become applicable wishing school assignment for the pupils to a school

attended only by pupils of a race other than that of the applicant, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end, as hereinafter provided, between March 1 and March 31, of each year, for the next-succeeding school year, beginning with the school year 1966-1967.

(2) After this plan has become applicable to all grades, as hereinafter provided; then, parents or legal guardians of pupils residing in Montgomery County, Alabama, prior to March 31, of each year, wishing school assignment to a school other than that which the pupil is then attending, shall make application to that end, as hereinafter provided, between March 1 and March 31, of each year.

B. (1) Parents or legal guardians of pupils entering the Montgomery County School System for the first time in grades to which this plan shall have become applicable and not having been residents of Montgomery County, Alabama on the preceding March 31, and wishing school assignment for the pupil to attend a school other than a school formerly attended by pupils of their race, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end at the Office of the Superintendent of Education of Montgomery County, Alabama and said application shall be promptly processed

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without regard to race in accordance with the provisions of this plan.

(2) After this plan has become applicable to all grades, as hereinafter provided; then, parents or legal guardians of pupils entering the Montgomery County School System for the first time and not having been residents of Mont-

gomery County, Alabama on the preceding March 31, wishing school assignment, shall make application to that end as hereinafter provided.

3. *Assignment Authority*:

In the assignment or transfer of pupils under this plan in or to specific schools, subject to the supervision and review by the Board of Education of Montgomery County, Alabama, the Superintendent of Education shall be charged with the responsibility for the assignment or transfer of pupils.

4. *Assignment Request*:

A. Until all grades in the Montgomery County School System have been desegregated in accord with the provision of this plan, all applications for assignment to grades reached under this plan must be filed on or before March 31, of each year, on forms obtained from the Office of the Superintendent of Education of Montgomery County, Alabama by the respective parent or legal guardian of the pupils. The proper forms will there be furnished to a parent or legal guardian of pupils on request between March 1 and March 31, of each year. Separate applications must be filed for each pupil for whom an assignment or transfer is requested.

B. After this plan has become applicable to all grades, assignment requests shall be processed as follows:

(1) A parent or legal guardian of pupils desiring to attend a school other than the one the pupil is then attending, except as hereinafter provided in paragraph 4B(3), may obtain forms for transfer or assignment between

March 1 and March 31, of each year, from the principal of

the school to which the assignment is desired and said form must be completed, signed and returned by a parent or legal guardian between March 1 and March 31, of each year, to the principal. Separate applications must be filed for each pupil for whom an assignment is requested.

(2) A parent or legal guardian of pupils entering the Montgomery County School System for the first time and not having been residents of Montgomery County, Alabama on the preceding March 31, wishing assignment as authorized in paragraph 2B(2) above, may obtain application forms from the office of the principal of the school to which assignment is desired and promptly return the completed and signed application to such office. Separate applications must be filed for each pupil for whom an assignment is requested.

(3) A preregistration period shall be held for the first, seventh and tenth grades between March 1 and March 31, of each year. During this period, a parent or legal guardian of a pupil who will enter the first grade shall obtain application forms from the principal of the school to which assignment is desired and shall complete, sign and return the application form to the principal on or before March 31, of each year. During this period, pupils entering the seventh and tenth grades shall obtain application forms from the principal of the school to which assignment is desired and this application form shall be completed and signed by the parent or legal guardian and returned to the principal on or before March 31, of each year. Separate applications must be filed for each pupil for whom registration is sought.

C. All assignment requests shall be processed by the *Assignment Authority* without discrimination on a basis of race or color, using only factors unrelated to race, such as parent and pupil choice, school attendance areas, proximity, availability of transportation, safety in routes and capacity.

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D. *Notice of action taken*:

(1) Notice of the action taken by the *Assignment Authority* on each application filed under this plan will be made on or before June 1 of each year to the parent or legal guardian of each pupil for whom the application was made, until this plan is applicable to all grades.

(2) After this plan has become applicable to all grades only those applicants whose requested assignment is denied will be notified. Such notice shall be given on or before June 1 of each year, or in cases of those entering the system for the first time, prompt notice shall be given, to the parent or legal guardian.

5. *Applicability of Plan*:

This plan shall have application in the school year beginning September, 1966, to the 12th, 11th, 10th, 9th, 8th, 7th, and 2nd, 1st and 3rd grades. This plan's applicability shall be extended through continued school years thereafter to include additional grades as follows:

For the school year beginning September, 1967, the 4th and 5th grades.

For the school year beginning September, 1968, the 6th grade.

Notice of Plan

(1) Until this plan shall have become applicable to all grades in the Montgomery County School System, the Superintendent of Education of Montgomery County shall direct publication in a daily newspaper in the City of Montgomery, Alabama; a notice in accord with the sample notice attached to this plan as "Exhibit A". This publication shall be made twice each week during the last two weeks in February of each successive year.

(2) After this plan has become applicable to all grades in the Montgomery County School System, the Superintendent of Education of Montgomery County shall direct publication as set out in paragraph (1) above in a

daily newspaper in the City of Montgomery, Alabama, the notice which is attached hereto as "Exhibit B".

Respectfully submitted,

HILL, ROBISON AND BELSER
Attorneys for the Defendants

Certificate of Service (omitted in printing).

"EXHIBIT A"

Notice To All Parents Or Guardians Of Pupils In The Montgomery County Public School System

In accordance with an order of the United States District Court for the Middle District of Alabama, the Montgomery County Board of Education will desegregate grades one, two and three of the elementary schools, grades seven, eight and nine of the junior high schools, and grades ten, eleven and twelve of the senior high schools for the school year commencing in September 1966, and for other years as applicable.

As the parents or guardians of pupils who will attend these grades in September 1966, you may submit an application to the Office of the Superintendent of Education of Montgomery County for your child to attend a school that was formerly attended only by members of another race. You may obtain the applications for assignment and transfer at the Office of the Superintendent of Education of Montgomery County between March 1 and March 31, 1966, on Monday through Friday, from 8:30 a.m. to 5:00 p.m. You must complete, sign and return the application to the Office of the Superintendent of Education on or before March 31, 1966. It is not necessary for more than one parent to pick up, sign or return the application.

All applications filed within the time and in the manner as stated above will be processed and acted on without discrimination as to the race of the applicants. You will be notified on or before June 1, 1966, whether your application has been accepted or rejected.

The Montgomery County Public School System is presently divided into elementary, junior high and high school

attendance areas. If you do not already know what school attendance area you reside in, you may obtain this information by either calling by telephone or going in person to the Office of the Superintendent of Education for the Montgomery County School System.

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"EXHIBIT B"

Notice To All Parents Or Guardians Of Pupils In The Montgomery County Public School System

In accordance with the orders of the United States District Court for the Middle District of Alabama, all grades in the Montgomery County School System have been desegregated.

As the parents or legal guardian of pupils who will attend schools of the Montgomery County School System during the next school year commencing in September, you may submit application for your child to attend any school in this system. If you desire for your child to attend a school other than the one the child is now attending, you may obtain an application from the principal of the school to which attendance is desired between March 1 and March 31. You must complete, sign and return the application to such principal on or before March 31. It is not necessary for more than one parent to pick up, sign or return the application.

A preregistration period shall be held for the first, seventh, and tenth grades between March 1 and March 31, of each year. During this period a parent or legal guardian of a pupil who will enter the first grade shall obtain application forms from the principal of the school to which

assignment is desired, and shall complete, sign and return the application form to the principal on or before March 31, of each year. During this period, pupils entering the seventh and tenth grades shall obtain application forms from the principal of the school to which assignment is desired and this application form shall be completed and signed by the parent or legal guardian and returned to the principal on or before March 31, of each year. Separate applications must be filed for each pupil for whom registration is sought.

All applications filed within the time and in the manner as stated above will be processed and acted upon without discrimination as to the race of the applicant. You will be notified on or before June 1 in the event your application

has been rejected.

The Montgomery County Public School System is presently divided into elementary, junior high and high school attendance areas. If you do not already know what school attendance area you reside in, you may obtain this information by either calling by telephone or going in person to the Office of the Superintendent of Education for the Montgomery County School System.

Order as to Filing Objections

(Filed January 19, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

As directed by this Court in its order made and entered herein on May 18, 1965, the defendants have filed with this Court as of January 14, 1966, their detailed plan for the operation of the Montgomery County public school system commencing with the 1966-1967 school year.

The objections, if any, to the plan as filed by said defendants on January 14, 1966, are ORDERED to be filed with this Court on or before February 18, 1966.

Done, this the 19th day of January, 1966.

FRANK M. JOHNSON, JR.
United States District Judge

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Objections of Amicus Curiae to Proposed Plan of Desegregation

(Filed February 18, 1966)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, as Amicus Curiae, objects to the proposed plan of desegregation of the Montgomery County School System submitted by the Defendants on January 14, 1966, for the following reasons:

1. The Defendants have failed to carry their burden of establishing the existence of administrative difficulties to justify any delay in desegregating all grades.

2. The proposed plan fails to provide for the desegregation of all grades by September 1967.

3. The plan fails to eliminate the effects of past racial assignments in grades purported to be desegregated.

4. The plan fails to provide for allowing individual Negroes, as an absolute right, to transfer to schools from which they were excluded because of their race.

5. The plan fails to provide for non-racial assignment of students who newly move to Montgomery County or who move from one attendance area to another.

6. The plan fails to provide for individual notice to parents of the rights and procedures available under the plan.

7. The plan fails to provide for Negroes enrolled in schools attended by white students to have full use and participation in all activities, facilities, and programs, including school bus transportation, without any distinction based upon race or color.

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8. The plan fails to provide for the elimination of race as a factor in the hiring, placing, and retention of teachers and for the desegregation of faculty in all grades covered by the plan.

BEN HARDEMAN
United States Attorney

JOHN M. ROSENBERG
Attorney

MASON C. LEWIS
Attorney

CERTIFICATE OF SERVICE (omitted in printing)

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Order as to Hearing on Objections

(Filed February 18, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

For the purpose of hearing the objections filed herein on this date to the proposed plans of desegregation as submitted by the defendants in each of the above-captioned cases, it is ORDERED that the above-captioned cases be and they are hereby consolidated for said purpose.

It is further ORDERED that the objections be heard in the United States District Courtroom, Montgomery, Alabama, commencing at 9 a.m., Friday, March 11, 1966.

Done, this the 18th day of February, 1966.

FRANK M. JOHNSON, JR.
United States District Judge

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Plaintiffs' Objections to Defendants' Plan of School Desegregation

(Filed February 18, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Plaintiffs in the above-styled cause, by and through their attorneys of record, and object to the Defendants' plan to desegregate the public schools of Montgomery County, Alabama; said Plan was filed in this Court on or about the 14th day of January, 1966, and as grounds for said objection assign the following:

1. The Defendants' entire plan is discriminatory and is based on race in that, "all existing school assignments shall continue without change except when transfer or assignment is authorized by the superintendent of education of Montgomery County, Alabama;" that the initial assignment of these pupils, prior to the Order of this Court on July 31, 1964, was based on race; any plan which continues such existing assignments is in violation of said Order.

2. The Plan fails to provide for the initial assignments of students on a nonracial basis. The Defendants propose to initially assign all students in grades on the basis of

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race for the 1966-67 school year. It is only after the initial assignments of students on the basis of race that students,

in grades being desegregated for the 1966-67 school year, who wish to attend school with students of another race can then apply for transfer. Defendants' proposal to initially assign students on the basis of race and then to permit transfers under certain conditions is clearly unconstitutional.

Plaintiffs submit that defendants should be required to initially assign all students in grades being desegregated without regard to dual school zones or dual attendance areas based on race, or in the alternative, to grant complete freedom of choice to all students to be affected by the plan for the school year 1966-67 without regards to dual school zones or attendance areas. See *Singleton* v. *Jackson Municipal Separate School District,* No. 22527 (5th Cir., January 26, 1966).

3. The Plan fails to provide for desegregation of all twelve (12) grades by September, 1966. Under Defendants' proposed plan complete desegregation of all twelve (12) grades will not be effective until the beginning of the 1968-69 school year. This delay in desegregation has not been justified by a showing by the defendant of administrative difficulties. *Brown* v. *Board of Education,* 349 U.S. 294 (1955); *Goss* v. *Board of Education of the City of Knoxville, Tennessee,* 373 U.S. 683 (1963). At this stage, even alleged administrative problems are closely scrutinized. See *Bradley* v. *School Board of the City of Richmond, Virginia,* and *Gilliam* v. *School Board of the City of Hopewell, Virginia,* 15 L.ed.2d 187 (Nov. 1965); *Rogers* v. *Paul,* 15 L.ed.2d 265 (Dec. 1965).

Plaintiffs submit defendants should plan for complete desegregation of all twelve (12) grades by September,

1966. See *Singleton* v. *Jackson Municipal Separate School District,* No. 22527 (5th Cir., January 26, 1966); *Price* v. *Denison Independent School District Board of Education,* 348 F.2d 110 (5th Cir. 1965). The defendants have failed to justify the delay until the 1968-69 school year required by the proposed plan.

4. The Plan fails to provide the right to transfer for students in grades not covered by the Plan for the 1966-67 school year. Students in grades not reached by defendants' plan for the 1966-67 school year, have an absolute right to transfer to schools from which they have been excluded because of race. "Administrative problems may justify and orderly transitional period during which the system may be desegregated several grades at a time. But the existence of this transitionary period cannot justify the denial of any individual student's constitutional right to freedom from discrimination. The school children in still-segregated grades in Negro schools are there by assignment based on their race. This assignment was unconstitutional. They have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race." *Singleton* v. *Jackson Municipal Separate School District, supra,* at p. 9.

5. The Plan fails to provide for the desegregation and non-discriminatory hiring, placing and retention of faculty and administrative personnel. The Defendants' proposal does not provide for the elimination of race as basis in employment, assignment or retention of teachers or administrators. Plaintiffs regard it as essential that defendants' Plan for desegregation of any public school system

provide an adequate start toward the elimination of race

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as a basis for employment, retention and assignment of teachers, administrators and other staff personnel. See *Bradley* v. *School Board of the City of Richmond, Virginia,* and *Gilliam* v. *School Board of the City of Hopewell, Virginia,* 15 L.ed.2d 187 (Nov. 1965); *Rogers* v. *Paul,* 15 L.ed.2d 265 (Dec. 1965). The Fifth Circuit Court of Appeals has interpreted these decisions to require a prompt and meaningful start toward teacher desegregation.

6. Defendants' desegregation Plan provides only for the consideration of transfer requests made at the instance of the student. The Plan does not provide for removing those factors from the school system which tend to encourage, promote and perpetuate segregation, e.g., "feeder" schools which operate on a racial basis, segregated teaching, professional and administrative staff, segregated special programs [e.g., classes for the handicapped or gifted, adult, vocational or commercial education or kindergarten programs]. In short, defendants' desegregation Plan is not designed to eliminate segregation from the Montgomery public school system.

7. The defendants' plan does not attempt nor can it effectuate desegregation of the public schools of Montgomery County, Alabama.

8. The Plan makes no provisions, providing bus transportation on a reorganized non-racial basis.

9. The Plan does not provide for the elimination of school zone lines based on race, as this Court found those

lines to exist on Page three (3) of the Memorandum Opinion.

10. The Plan provides no procedure for the elimination of the "feeder system," which had been set up and which this Court found to be operating on a racial basis.

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11. The Plan does not provide for the defendants to perform "its clear legal duty of taking affirmative steps to provide and operate a desegregated educational system in Montgomery County, Alabama," on the contrary, the Plan places the burden of desegregating the public school system of Montgomery County, Alabama, on Negro pupils and their parents and does not provide for initiation of desegregation by the defendants, and as such this conflicts with the Opinion and Judgment of this Court and is in conflict with the decision of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

12. The Plan fails to abolish the continued use of racial factors in the planning of the extra-curricular activities, construction of schools, planning of school budgets and the disbursement of school funds.

12. (a) The Plan fails to set ascertainable standards for the consideration of the applications for assignment or application of pupils to a particular school.

12. (b) It fails to provide for the assignment of pupils on a non-racial basis.

12. (c) The Plan fails to abolish the present dual scheme of school attendance area lines.

12. (d) It affirmatively appears that this Plan has the purpose and effect of providing token desegregation of schools and the school system and does not meet the minimum requirement and Laws of the land with respect to desegregating public schools.

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13. Section two (Transferring Assignment) of the Defendants' Desegregation plan Establishes dual procedures and apparently dual time limits for pupils desiring "school assignment to a school attended only by pupils of a race other than that of the applicant prior to the entering of the judgment of the Court in this case, in July of 1964." In effect, this provision establishes one procedure to be used by pupils desiring to attend an integrated school and another procedure for pupils desiring to attend a colored school. Therefore, this plan is based on race and is unconstitutional.

14. That portion of the plan which requires the parents or legal Guardians of pupils who desired to attend an integrated school to personally obtain and personally return to the office of the Superintendent of Education the application for transfer is designed to discourage Negro parents to send their children to formally white school. No such requirement is necessary for white children to transfer to other white schools and no such requirement is necessary for Negro children to transfer to other Negro schools.

15. Said Plan fails to give a pupil who is of sufficient age and grade an opportunity to exercise his choice of the school which he would desire to attend.

16. The entire plan of the defendants is unconstitutional in that it makes no provision compelling each pupil in the Montgomery County School System to exercise his choice of a school. The plan only comes into operation when a pupil desires to attend a school attended by pupils other than members of his race. Each pupil in the school system should be compelled to exercise his choice of the school which he desires to attend. Therefore, the defendants should supply to each pupil in the school system a form upon which he must indicate his choice of the school which he desires to attend. Under no circumstances should the defendants reassign pupils to the school which the initial assignment was based on race.

17. In addition to the notice set out in the plan, the parents should receive a copy of said notice along with the report card of each pupil in the school system and a copy of said notice should be placed on the bulletin board

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of each school in the system.

18. The plan fails to provide for desegregation of any new constructions and any and all consolidations of schools.

19. The defendants' plan fails to specifically indicate that the dual or biracial school attendance system will be abolished with the application of the plan to the respective grades when, and as, reached by it. *Stell* v. *Savannah-Chatham County Board of Education,* supra; *Lockett* v. *Board of Education of Muscogee County, Georgia,* 352 F.2d 225 (5th Cir. 1965) and *Bush* v. *Orleans Parish School Board,* 308 F.2d 491 (5th Cir. 1962). While students entering desegregated grades are offered a choice of schools,

the plan fails to indicate how students failing to exercise such choice will be assigned. See *Singleton* v. *Jackson Municipal Separate School District*, supra; *Kemp* v. *Beasley*, No. 18050 (8th Cir., October 7, 1965).

WHEREFORE, plaintiffs pray that the Court will promptly set a hearing on plaintiffs' objections to the plan and that upon such hearing the Court will grant the relief prayed for above. Plaintiffs further pray that this Court will retain jurisdiction of this cause for the purpose of granting such further relief as may be required by further developments.

Respectfully submitted,

GRAY & SEAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (omitted in printing)

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Remarks of Hon. Frank M. Johnson, Jr. at Conclusion of Hearing of March 11, 1966

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

(The above styled case coming on for hearing at Montgomery, Alabama, March 11, 1966, before Hon. Frank M. Johnson, Jr., Judge, a hearing was had, at the conclusion of which the following remarks were made by the Court:)

The Court: All right, gentlemen, the Court will approve in part and disapprove in part the proposed plan that has been objected to and been under scrutiny.

As to the grades and schedule for desegregation, the Board proposes to add to the Freedom of Choice grades grades three and eight. The Court approves that, except they should add grade four, also; that is commencing September, '66. And then in September, '67, I approve of what you propose, except we will add grade six, and that will make all of the grades, effective September, '67. That means, then, that you propose, and with the addition of grade four, three, four, and eight, September, '66, and grades five and six September, '67. That will get all of them, won't it?

Mr. Robison: Yes, sir.

The Court: All right. The Court feels as if you should follow your H.E.W. regulations as far as notice is concerned. You should send out choice forms and applications, also, by the children to the parents. Let the choice forms

choice period be from April 1 to April 30, with the choice forms and notice to each of the parents going out not later than April 1. Follow the forms that have been set out here in the H.E.W. regulations; they seem to cover it fairly adequately.

All right. As to consolidating and closing some of the schools, the Court feels that a number of these small, inade-

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quate schools that were established and have been operated to perpetuate the dual system based on race should be closed. I realize what the administrative and financial problems are in a school system the size of Montgomery, so I will not require all of them to be closed September, '66, but you should get started on that and close some of them; I am going to leave it up to you lawyers to figure out which ones you are going to close by September, '66; but approximately one third of them should be closed effective September, '66—certainly Abraham's Vineyard down here right next door to Harrison, that should be closed; that is the reason it is taking a lot of money to operate the school system, when you operate things like that. Consider Big Zion to be closed and consolidated into Pintlala, and Lillian Dungee, consolidation into Catoma, maybe Tankersley to Pintlala, and I am going to leave that up to you lawyers representing the Board—and I am going to ask the Government to represent the Court on this as Amicus and figure out which schools of this list of twenty-one of them, as set out on one of these Exhibits here, the evidence reflects that they are small rural schools, colored schools, that Mr. McKee named in his testimony, which of the ones that can be closed with the least amount of administrative and financial difficulty.

The order that is going to be drawn—and the Amicus, after you do this conferring, will draw this order to be presented to me not less than next Friday or the last of next week—should eliminate any pressure that might be upon the Board to channel their finances into making additions to larger Negro schools to absorb the closing and consolidation of these small rural Negro schools. I don't want that to happen; that can't be tolerated. As I understand, the Board already proposes to eliminate through closing and consolidation all of these schools, but the order should have some definite dates on it, and should designate the schools definitely; and the reason I am leaving it up to you all is that so you can determine which of the schools are to be closed September, '66, and which of them will remain not longer than September, '67. All of them should be closed by September, '67. That is Abraham's Vineyard, Alice White,

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Arthur Cook, Big Zion, Cecil, Chappell Gray, G. W. Trenholm, Katie Bowen, Lillian Dabney, Lillian Dungee, McLean, McLemore, Phillips, Tankersley, Waugh, Zion Hill, Arrington, Woodley, Battle, McCants, and Mount Zion Road. Of course, those students from those schools that are being consolidated and closed should, as the Board proposes, have Freedom of Choice, as new students coming into the system; I understand that is what the Board does propose as far as that point is concerned.

All facilities, programs, and services that are made available should be made available on a desegregated basis, and to that extent the Court—and the Board makes the statement to the Court in brief that they are available already on a desegregated basis—so that part of it will be approved.

The Court will order—and you lawyers work it out, if you can, so as to help the Board in its administrative prob-

lems—will order the Board to take the necessary affirmative steps to eliminate the past discriminatory assignments in the staff and teachers to eliminate race as a factor in hiring and placing and retention of faculty and staff members. You can, if you will, agree upon the schools where that is to be effective in September, '66, and I will not expect too much of it in September, '66, because of the timing. I accept Mr. McKee's testimony that the bulk of that is done up until now; but I will expect a considerable amount of it, in line with the Singleton case, effective September, '67. And there should be no more separate meetings of faculty and staff as far as the school system is concerned; that should be eliminated now. There is no administrative problem in doing that; it occurs to me that the separate meetings incur additional administrative and expense problems.

The dual transportation system should be eliminated completely by September, '66. Order the geographical attendance areas abolished, and we will be through with the transition period by September, '67. That will end it completely. And order the abolition of the geographical attendance areas not later than September, '67. I see no reason why they should not be allowed to use them until

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then, as long as their use doesn't involve discrimination based upon color.

As I stated, your choice period is from April 1 to April 30. Report to the Court on the assignment and the disposition of applications of students by May 15. Report to the Court on or before June 15 as to the progress that you have made on your faculty desegregation.

I believe that covers it all. I might announce that the lawyers have agreed, and the Court approved their agreement, there is being formalized at this time an Order to be entered in connection with the Bullock County schools, and that Order is along the same lines as I have just ordered in the Montgomery case. And the order in the Montgomery case that I want drawn envisions approximately the same Order that was entered in the Macon County case, with the changes and exceptions that I have indicated. And also the one that the lawyers agreed to in the Lowndes County case. I understand that a school system as large as Montgomery, as opposed to the size of the school system in these rural counties, needs some additional time for transition, and the comments I have just made take that into consideration. All right, recess Court until further order.

* * * * *

GLYNN HENDERSON
Official Court Reporter

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Order to Execute Plan for Desegregation

(Filed March 22, 1966)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

In accordance with the conclusions reached by this Court in this matter and the evidence presented in this matter upon which those conclusions are based, it is hereby,

ORDERED, ADJUDGED, and DECREED that the defendants, their agents, officers, employees, and successors, and all those in active concert or participation with them shall:

1. Execute the Plan for Desegregation of the Montgomery County, Alabama Public School System which is attached hereto and incorporated herein.

2. Report to the Court, on or before June 7, and each such date until further Order of this Court, the anticipated student enrollment in each school by race and grade for the next school year and report, as it occurs, any subsequent substantial change in enrollment affecting desegregation.

3. Report to the Court by June 15, and each such date, until further Order of this Court, the planned assignments of professional staff to each school for the next school year by race and grade, or where appropriate, by subject taught or position held, and report, as it occurs, any sub-

sequent change in planned staff assignment affecting staff desegregation.

4. Report as soon as possible after the opening of school, but no later than September 20, and each such date until

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further Order of this Court, the actual data for the items covered in the reports ordered in Paragraphs 2 and 3.

5. The Court specifically retains jurisdiction of the parties and the cause.

DONE THIS 22nd day of March, 1966.

FRANK M. JOHNSON, JR.
United States District Judge

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PLAN FOR DESEGREGATION OF THE PUBLIC SCHOOL SYSTEM OF MONTGOMERY COUNTY, ALABAMA

I.

Grades Covered

All grades of the Montgomery County Public School System shall be desegregated by the Fall of 1967.

(a) 1966: Commencing with the school term in September 1966, grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 of the Montgomery County Public School System shall be desegregated and pupils assigned, without regard to race or color, on a freedom of choice basis as described in this Plan.

(b) 1967: Commencing with the school term in September 1967, the remaining grades, specifically grades 5 and 6, of the Montgomery County Public School System shall be desegregated and pupils assigned, without regard to race or color, on a freedom of choice basis as described in this Plan.

II.

Nondiscriminatory Operation of Newly Constructed Schools and Newly Expanded Schools

Any school to be newly constructed and any school to be substantially expanded by the construction of additional classrooms will be planned, opened, expanded, and operated on a nonsegregated basis. Freedom of choice will cover all grades, and teachers and principals will be as-

signed so that the faculty is not composed of members of one race.

III.

Operation of the Freedom of Choice Plan

The following requirements shall apply for all students covered by freedom of choice under this Plan.

(a) *Who May Exercise Choice*: A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of

the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this Plan to a student exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) *Annual Exercise of Choice*: Each student, both white and Negro, is required to exercise a free choice of schools annually.

(c) *Choice Period*: The period for exercising choice will commence on April 1, and end on April 30, preceding the school year for which choice is to be exercised. No student or prospective student, who exercises his choice with the choice period, shall be given any preference because of the time within the period when such choice was exercised.

(d) *Mandatory Exercise of Choice*: A failure to exercise a choice within the choice period does not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens will be assigned to the school nearest his home where space is available, under standards for determining available space which will be applied uniformly throughout the system.

(e) *Distribution of Explanatory Notice and Choice Form*: On the first school day of the choice period, an explanatory notice and a choice form (Appendices A and B) will be sent home with each child in the Montgomery County Public School System. Extra copies of the explanatory notice and the choice form will be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent.

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(f) *Return of Choice Form*: At the option of the person completing the choice form, the choice form may be returned by mail, in person, or by messenger to the office of the Superintendent.

(g) *Choices not on Official Form*: The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(h) *Choice Forms Binding*: Once a choice form has been submitted, it is binding for the entire school year and may not be changed except in cases of parents making different choices than their children under the conditions set forth in Paragraph III (a) of this Plan and in cases where compelling hardship is shown by the student.

(i) *Preferences in Assignment*: In assigning students to schools, no preference will be given to any student for prior attendance at a school, and no choice will be denied for any reason other than overcrowding. The Montgomery County Board of Education shall report to the Court each instance of a preference given for prior attendance at a school because of special circumstances. If, as a result of such preference, a student residing closer to the school than the special student is denied his choice, a report of the disposition of the denied student, and reasons therefor, shall be made to the Court. In case of overcrowding at any school, preference will be given on the basis of the proximity of the school to the homes of students choosing it, without regard to race or color. In determining proximity for the 1966-1967 school year, existing district lines may be employed without regard to race. All existing attendance areas as defined by district lines and feeder school descriptions will be abolished effective 1967.

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(j) *Second Choice Where First Choice is Denied*: Any student whose choice is denied must be notified in writing by May 30, and give his choice of each school in the system serving his grade level where space is available.

(k) *Transfers for Special Needs*: Each student must attend the school to which he is assigned under the foregoing provisions, except that any student who requires a

course of study not offered at that school, or who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is, designed to fit, or offers courses for his special needs.

(l) *Transportation*: Busses will be routed to the maximum extent feasible so as to serve each student choosing any school in the system. In any event, every student choosing the school nearest his residence will be transported to the school to which he is assigned, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation.

(m) *Official Not to Influence Choice*: No official, teacher, or employee of the school system shall require or request any student to submit a choice form during the choice period other than by the explanatory notice and the choice form. After the expiration of the choice period, the school system will make all reasonable efforts to obtain a completed choice form from each student who has not exercised a choice. However, at no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning individual choices made or schools to which individual students are assigned will not be made public.

(n) *Public Notice*: On, or shortly before, the date the choice period opens, a notice describing the desegregation plan will be published in the Montgomery daily newspapers.

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Copies of this notice will be distributed at about the same time to all other news media in Montgomery.

IV.

Services, Facilities, Activities, and Programs

A student shall have full access to all services, facilities, activities, and programs (including transportation, athletics, and other extra curricular activities) that may be conducted or sponsored by, or affiliated with the schools of the system. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

V.

New Students

Each new student will be required to exercise a free choice of schools before enrollment. Each such student will be furnished a copy of the prescribed notice and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each will be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period will be given at least one week to do so.

VI.

Non-covered Grades

Students entering the fifth or sixth grade in September, 1966 will not be covered by this freedom of choice plan. However, any such student shall have the right to apply for transfer to and be enrolled in any school from which he was excluded, in the past, on account of his race.

VII.

Faculty and Staff

Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dis-

missal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.

In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

Teachers and other professional staff will not be dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance, where one or more teachers or other professional staff members are to be displaced as a result of desegregation or school closings, they shall be transferred to any position in the system where there is a vacancy for which they are qualified.

VIII.

Closing of Inadequate Facilities

Prior to the commencement of the 1966-67 school year, the Abraham's Vineyard, Phillips, Cecil, Arthur Cook, Battle, McCant's, and Katie Bowen Elementary Schools will be discontinued as educational facilities.

Prior to the commencement of the 1967-68 school year, the following schools will be discontinued as educational facilities:

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Alice White	Lillian Dungee
Arrington	Waugh
Big Zion	Woodley
Tankersely	Zion Hill
Chappell Gray	McLean
G. W. Trenholm	McLemore
Lillian Dabney	Mt. Zion Road

The Montgomery County Board will design and provide remedial educational programs to eliminate the effects of past discrimination, particularly, the results of the unequal and inferior educational opportunities which have been offered in the past to Negro students in the Montgomery County School System.

Students displaced as a result of the closing of the above listed schools will be assigned to schools, without regard to race or color, on a freedom of choice basis as described in this plan, whether or not their grade is covered.

Expansion of existing school plants to accommodate displaced students will be designed to eliminate the dual school system.

APPENDIX A

Notice

Grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 will be operated on a desegregated basis next year. Any student in these grades may choose to attend any school in the Montgomery County School System regardless of the school's former racial designation. A choice must be made for each child who will be in grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 in September, 1966.

Attached to this Notice is a choice form which must be filled out on or before April 30, 1966. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise, a parent or other adult serving as a parent must sign the choice form.

No child will be denied his choice except for reasons of overcrowding. If a child's choice is denied for overcrowding, a second choice will be made available. If no choice can be granted, because of overcrowding, children nearest the school will be given preference.

All facilities, activities, and programs at the school chosen will be available to all students.

Transportation will be provided, if possible, no matter what school is chosen.

Choice forms may be returned by mail, in person, or by messenger to the Superintendent's Office at 305 South Lawrence Street, Montgomery, Alabama.

APPENDIX B

(Elementary) (Junior High School) (High School)

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school the child attended last year, and it does not matter whether the school was formerly a white or a Negro school. The form must be mailed or brought to the office of the Superintendent, 305 South Lawrence Street, Montgomery, Alabama, by April 30, 1966. A choice is required for each child. Unless you are notified to the contrary by May 30th, your choice is approved.

Name of child .....
(Last) (First) (Middle)

Address .....

Name of Parent or other
adult serving as parent .....

If child is entering first grade, date of birth:

.....
(Month) (Day) (Year)

Grade pupil is entering .....

School Attending During
1965-66 School Year .....

Choose one of the following schools by marking an X beside the name:

Name of School	Grades	Location
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Signature .....

Date .....

To be filled in by Superintendent:

School Assigned: .....

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Order Amending Order of March 22, 1966

(Filed August 18, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The order of this Court made and entered herein on March 22, 1966, recited that race or color will henceforth not be a factor in hiring or assigning teachers and other professional staff. The effect of this order was to require the Montgomery County Board of Education to commence the process of desegregating the faculty and professional staff commencing with the school year 1966-67.

This Court judicially notes the action taken by the United States Court of Appeals for the Fifth Circuit on August 16, 1966, in the Mobile school case of *Birdie Mae Davis, et al.* v. *Board of School Commissioners of Mobile County, Alabama, et al.*, —— F. 2d ——, wherein, as to the desegregation of the faculty and staff in the Mobile school system, the Mobile County Board of Education has been allowed until the school year 1967-68 to end its policy of hiring and assigning teachers and staff according to race. Uniformity, as well as fairness, requires this Court upon its own motion, therefore, to amend its order of March 22, 1966, to the extent that the Montgomery County School Board of Education be allowed until the school year 1967-68 to end its present policy of hiring and assigning teachers and other school personnel according to race.

It is, therefore, the ORDER, JUDGMENT and DECREE of this Court that the order of this Court made and entered herein on March 22, 1966, be and the same is hereby amended to the extent that the Montgomery County Board of Education—286— be, and said Board is, hereby allowed until the school year 1967-68 to commence desegregation of the faculty and professional staff in the Montgomery County school system.

It is further ORDERED that the Montgomery County Board of Education report to this Court by June 15, 1967, the planned assignment of the faculty and professional staff to each school for the 1967-68 school year by race and grade.

Done, this the 18th day of August, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

Petition of Plaintiffs for Admission of Willie Robert Bell

(Filed September 12, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs, by and through their attorneys of record, and show unto this honorable court as follows:

1. That in accordance with the Order of this court made on March 22, 1966, Willie Robert Bell, a Negro student who during the 1965-66 school year was enrolled in Carver High School, Montgomery, Alabama, and that pursuant to the said Order referred to above, the said Willie Robert Bell did within the time provided by said Order, file with the defendant Board of Education his choice of school as Lanier High School in Montgomery, Alabama.

2. That on or about June 3, 1966, he received a letter from Lanier High School requesting he and his parents to come register at said school between June 9th and 10th from 12 to 3 p.m. That said Willie Robert Bell and his mother did on or about the 9th day of June, 1966, go to said school and register.

3. That on or about August 18, 1966, said Willie Robert Bell received a letter indicating that he was to report at said school for a band meeting on August 27, 1966. That said Willie Robert Bell did appear and did attend said band meeting.

4. That on or about September 1, 1966, the mother of said Willie Robert Bell received a phone call from the principal of Lanier High School and was instructed to bring

said student to the school on September 2, 1966.

5. That on said date, the said Willie Robert Bell and his mother appeared at said school and were informed by the principal that he could not be enrolled in said school because he had a record in juvenile court, but advised him that he may enroll in the school which he attended the previous year.

6. By the defendant failing and refusing to admit said student to the school of his choice is in violation of the Order of this Court enter on March 22, 1966.

7. That on September 6, 1966, the said Willie Robert Bell was enrolled in Carver High School and remained enrolled in said school until Thursday, September 8, 1966, at which time he was informed by the school officials that he was expelled and could not attend any school.

8. That said expulsion of said student without a hearing and an opportunity to be heard is in violation of due process of law as provided by the Fourteenth Amendment to the United States Constitution.

THE PREMISES CONSIDERED, Plaintiff prays that this Court set a date for hearing of this Petition and upon a hearing thereof, this Court will enter an order directing the defendants to admit Willie Robert Bell as a student at Lanier High School. Plaintiff further prays for such further and different relief to which he is entitled.

GRAY & SEAY

Certificate of Service (omitted in printing)

Order Setting Hearing on Plaintiffs' Petition

(Filed September 13, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs' motion seeking an order of this Court directing the defendants to admit Willie Robert Bell as a student to Sidney Lanier High School is hereby Ordered to be and the same is set for a hearing to commence Wednesday, September 14, 1966, at 2 p.m., in the United States District Courtroom, Montgomery, Alabama.

Done, this the 13th day of September, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

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Answer to Petition of Plaintiffs

(Filed September 14, 1966)

IN THE
UNITED STATES DISTRICT COURT,
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

No. 2072-N

ARLAN CARR, JR., etc., et al.,

Plaintiffs,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION, etc., et al.,

Defendants.

Now come the defendants in the above entitled cause and for answer to the petition heretofore filed in this cause on the 12th day of September, 1966, by the attorneys of record for the plaintiffs in the above entitled cause, say as follows:

1. That they admit the allegations and averments contained in paragraph 1 of said petition.

2. That they admit the allegations and averments contained in paragraph 2 of said petition.

3. That they admit the allegations and averments contained in paragraph 3 of said petition.

4. That they admit the allegations and averments contained in paragraph 4 of said petition.

5. That they deny each and every allegation and averment contained in paragraph 5 of said petition and for further answer to said paragraph 5 say that the said Willie Robert Bell and his mother did appear at Sidney Lanier High School on September 2, 1966, at which time they were informed by H. H. Adair, Principal of Sidney Lanier High School, that because of the record of the said Willie Robert Bell which had been brought to his attention, by the administrative officers of the Board of Education of Montgomery County, Alabama, Willie Robert Bell could not be admitted at this time to Sidney Lanier High School; that Mr. Adair hoped that when he "got straightened out" he would be able to attend and finish high school. That the actions of the defendants, their agents and employees were not influenced by race, color or creed.

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6. That they deny the allegations and averments contained in paragraph 6 of said petition.

7. The defendants deny each and every allegation of paragraph 7 and for further answer to said paragraph 7 say that on September 6, 1966, the said Willie Robert Bell filed a choice form at Carver Senior High School in Montgomery, Alabama, and that on the afternoon of September 7, a faculty member of Carver Senior High School did assist Willie Robert Bell in the filling out of a program card. That on September 8, W. P. Thompson, Principal of Carver Senior High School informed Willie Robert Bell that he could not enroll at Carver Senior High School at

the present time as the said W. P. Thompson had been notified by administrative personnel of the Montgomery County School system that because of the record of Willie Robert Bell which had been called to their attention, Willie Robert Bell should not be admitted to any high school in this system. That the action taken by the defendants, their agents and employees, was not based on race, color or creed.

8. That for answer to paragraph 8 of said petition, the defendants say that the said Willie Robert Bell was not entitled to an administrative hearing; that none was requested, that the action taken is not a violation of the due process of law as provided for in the Fourteenth Amendment of the Constitution of the United States; that the action was an administrative matter and taken for the purpose of maintaining order and discipline in the public school system of Montgomery County; for the preservation of said system.

For further answer to the petition as a whole, the defendants say that the action complained of by the said plaintiffs and Willie Robert Bell is the long-standing policy of the administrative officers and employees of the public school system of Montgomery County; that said action is no more than the exercise of the discretionary authority invested in school authorities with respect to any applicant or pupil in the system, regardless of race, color or creed; that said action is not in violation of or any attempt to

circumvent the Order of this Court entered March 27, 1966. And in further support of the answer of the defendants, there is attached hereto and made a part hereof the affidavit of Denny Abbott, Chief Probation Officer of the Domestic Relations Division of the Circuit Court of Montgomery

County, Alabama, as Exhibit A; the affidavit of Walter T. McKee, Superintendent of Education of Montgomery County and William Silas Garrett, Assistant Superintendent of Education of Montgomery County, as Exhibit B; the affidavit of H. H. Adair, Principal of Sidney Lanier High School of Montgomery County, Alabama, as Exhibit C; and the affidavit of W. P. Thompson, Principal of Carver Senior High School of Montgomery County, Alabama, as Exhibit D.

Now having answered said petition and each and every paragraph thereof, your defendants pray that they be discharged with the reasonable costs in their behalf expended.

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

EXHIBIT "A"

STATE OF ALABAMA :

:

COUNTY OF MONTGOMERY :

Before me, the undersigned authority, personally appeared Denny Abbot, who is known to me and who, being by me first duly sworn, on oath doth depose and say as follows:

I graduated from Huntingdon College in Montgomery, Alabama, in 1961, with a BA Degree Major in Sociology. I have completed all of my work for a Masters of Science Degree in Criminology and Corrections, with the exception of the submission of my thesis. This work was done at Florida State University. I have attended two sessions of Delinquency Control Institutes at Florida State University and have had five years of experience in the Family Court of Montgomery County, Alabama, serving as Chief Probation Officer of this Court for the past three years.

I have official and personal knowledge of Willie Robert Bell's record as a juvenile in the Family Court Division of the Circuit Court of Montgomery County, Alabama. Willie Robert Bell was first before this Court on September 1, 1963, at which time he was 13 years of age and was charged with using a car without the owner's consent, no driver's license, and reckless driving. The car belonged to Willie Robert Bell's father and the no driver's license and reckless driving offense arose out of a chase by motorcycle patrolman Bland of the City of Montgomery chasing Willie Robert Bell. After conference with Willie Robert Bell's

father, the charge of using the car without the owner's consent was dropped and the no driver's license and reckless driving charges remained. My records do not indicate final disposition of the charges of no driver's license and reckless driving.

Willie Robert Bell next appeared before this Court on March 19, 1965, at which time he was charged with failure to obey a police officer. Willie Robert Bell was ordered to leave an area and he refused to do so. At this time, there were demonstrations going on in the City of Montgomery. On April 9, 1965, Willie Robert Bell was brought before this Court on the charge of failure to obey a police officer

at which time the Judge lectured Willie Robert Bell and released him.

Willie Robert Bell next appeared before this Court on a charge of larceny on March 8, 1966. This charge of larceny was for the shoplifting of seven decks of playing cards from Bama Department Store on the Southern Bypass. This case was heard on March 24, 1966, at which time Willie Robert Bell was adjudged a delinquent and given six months in the County Jail with a suspended sentence and he was placed on probation.

On April 14, 1966, Willie Robert Bell was charged with disorderly conduct when he was arrested by Patrolmen Gandy and Swearengin of the City Police Department of the City of Montgomery. At this time he cursed the officers and refused to get into the police car and Officer Causey of the Youth Bureau of the City of Montgomery was called. This incident occurred after ten o'clock at night. On April 21, 1966, this charge of disorderly conduct was before the Court and continued to April 28, 1966, at which time Willie Robert Bell's probation was revoked and

he was confined to the detention area for juveniles with his case to be reviewed in one month. On April 26, 1966, his case was reviewed and he was released with his probation to continue.

On August 5, 1966, Willie Robert Bell was arrested in a raid which occurred at 11:20 P.M., on the home of O'Garie Tillman at Mt. Meigs, Alabama, which raid was participated in by the undersigned and Vernon Backer, a Probation Officer of the Juvenile Division of the Family Court Division of the Circuit Court of Montgomery County, Alabama, representatives of the Sheriff's Office of Montgomery County, Alabama, and State Troopers. This raid occurred at 11:20 p.m., Tillman and four other male adults, along with Willie Robert Bell, were observed dancing, petting with one another and drinking and at the time of the raid the adults were charged with contributing to the delinquency of a minor and Willie Robert Bell was charged with violation of his probation. These cases were heard by the Court on August 18, 1966, at which time the charge

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of contributing to the delinquency of a minor against the five adult males was continued for six months for further consideration; Willie Robert Bell was lectured and permitted to continue on probation.

WITNESS my hand, this 14th day of September, 1966.

DENNY ABBOTT

Sworn to September 14, 1966.

EXHIBIT "B"

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Before me the undersigned authority personally appeared William Silas Garrett who is known to me and who being by me first duly sworn on oath doth depose and say as follows:

I am Associate Superintendent of Education of the Montgomery County Board of Education and have been Associate Superintendent for the past 16 years. I have been in the Montgomery County Public School System for 28 years.

On or about August 29, 1966, I was advised by Mr. Walter T. McKee, Superintendent of Education of the Montgomery County Board of Education, that he had received a report on the record of Willie Robert Bell and that he had notified Mr. H. H. Adair of the record, and that Willie Robert Bell could not be admitted at this time to Sidney Lanier High School or any other high school in the system. He informed me of this record and instructed me to notify the other high schools in the system that due to the record of Willie Robert Bell he was not eligible for admission.

On or about September 2, I received a telephone call from a person representing herself to be Mrs. Bell, advising me that her son Willie Robert Bell had been refused admission to Sidney Lanier High School. I told her that I was aware of the circumstances and that her son could not be admitted to any high school in this system at this time.

On or about September 7, I notified Mr. W. E. Thompson, Principal of Carver High School, and other senior high school principals that because of the record of Willie Robert Bell and in line with the long standing policy of admissions Willie Robert Bell was not eligible for admission to any high school in this system.

The action taken by Mr. McKee and I with regard to the refusal of admission of Willie Robert Bell was not based or influenced in any way by race, color, or creed. When records or disciplinary problems are brought to our attention which we feel justify suspension or expulsion, we take the appropriate and necessary action. Expulsion and suspension powers are also within the sound discretion of the school principals.

It is not the policy of the admission officers of the Board of Education or the principals of the schools of the Board of Education, Montgomery County, to search or cause to be searched the record of individual students; however, when a problem is brought to our attention by an official of the County, an employee of the Board of Education, or an interested citizen of the County, we feel it is our duty to investigate and if necessary make recommendations.

Given under my hand this 14th day of September, 1966.

WILLIAM SILAS GARRETT

Sworn to September 14, 1966.

STATE OF ALABAMA
COUNTY OF MONTGOMERY

The undersigned Walter T. McKee, Superintendent of the Montgomery County Board of Education, has read the above and foregoing affidavit and the information and facts stated therein are true and correct.

Witness my hand this 14th day of September, 1966:

WALTER T. McKEE

Sworn to September 14, 1966.

EXHIBIT "C"

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Before me the undersigned authority personally appeared H. H. Adair who is known to me and who being by me first duly sworn on oath doth depose and say as follows:

I am principal of Sidney Lanier High School, and prior to becoming principal I served as assistant principal of Sidney Lanier High School for a period of six years. I have been in the Public School System of Montgomery County for more than twelve years.

On or about August 29, I received a call from Mr. Walter McKee, Superintendent of Education of the Montgomery County School System. He advised me that the record of Willie Robert Bell had been called to his attention and he gave me this record. Mr. McKee called to my attention the long standing policy of the administration that under the circumstances of the record of Willie Robert Bell being known and being what it was he should not be admitted to any school in this system. On September 1, I contacted the mother of Willie Robert Bell and advised her to come with her son to Sidney Lanier on the morning of September 2. She appeared with Willie Robert Bell and I advised her in the presence of Mr. Lance D. Grissett, Assistant Principal of Sidney Lanier, of the record which had been brought to my attention and that under the circumstances Willie Robert Bell could not be ad-

mitted to school. At this time I stated to her that I hoped when he "got straightened out" that he would be able to attend and finish high school. At this time she left with her son.

The action taken by me was not influenced in any way by race, color, or creed, as I would have taken similar action on any applicant for admission to Sidney Lanier under the circumstances in considering a similar record of any student.

The brother of Willie Robert Bell is presently attending Sidney Lanier High School and at the time I talked with Willie Robert Bell's mother she asked me if Willie's brother would be affected. I advised her that it would not. I had received a copy of a report of the Police Department of the City of Montgomery concerning Willie Robert Bell's brother, a copy of which report is attached to this affidavit; however, I did not consider this sufficient grounds to refuse admittance.

Witness my hand this 14th day of September, 1966.

H. H. ADAIR

Sworn to September 14, 1966.

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SUPPLEMENTARY OFFENSE REPORT

POLICE DEPARTMENT
MONTGOMERY, ALABAMA

Time
8:10 P.M.

Montgomery Police Dept. Color ( ) Sex ( )
Complainant Date Aug. 9, 1966

Address Offense as Reported
Fighting & Cussing

Res. Phone After Investigation Changed To
Fighting & Cussing

Bus. Phone

Complaint:

At 10:30 a.m. this date, Officer Swearengin arrested the two above boys for fighting and cussing at the above country club. There were several women and children present at the time this incident happened.

Investigation:

After Jessie Williams and Richard Bell were picked up for the above offenses, they were released and told to report to the Y. A. Div. with their mother today at 3:00 p.m. Jessie Williams and Jessie Bell Jr. are one and the same.

After Jessie Bell Jr. N/M age 17, and Richard Bell, N/M age 15, 628 Kimball St. tel. 263-5279 had been brought to this office by their mother, Althea Bell; we talked to them about the above offenses. Jessie told us that it all started when they carried a sack of ice into the club. Jessie

said that he told his brother Richard to make out a ticket on the ice. Jessie said that when he told Richard this, Richard said "hell make one out your self, you got a pencil in your pocket". Jessie said that this is when he went over to Richard and hit him with a fifty pound-paper bag. Jessie said this is when they started tussling. Jessie said that this is when he hit Richard in the mouth with his right fist, cutting Richard's bottom lip. We observed the small cut on Richard's bottom lip at the time that we talked to him in the Y. A. Office.

We also talked to Richard Bell about the above offenses, and he told us that everything his brother had told us was true, and that he (Richard) was involved in the above offenses.

Disposition:

Jessie Bell Jr. was charged to the Y. A. Div. and Richard Bell was counseled, warned, and released to his parents. Jessie was also released to his parents. This case is cleared by arrest.

This Offense Is Declared: Unfounded Cleared by Arrest

Exceptionally Cleared Inactive (Not Cleared)

Signed H. L. Gilmore & Leola Davis
Investigating Officers

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EXHIBIT "D"

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Before me the undersigned authority personally appeared W. E. Thompson, who is known to me and who being by me first duly sworn on oath, doth depose and say as follows:

I am the principal of Carver Senior High School and have been principal of this school for the past 10 years. I served as assistant principal for 6 years, and have been in the Montgomery County Public School System for 18 years.

On September 7, 1966, I received a call from Mr. Silas Garrett, Associate Superintendent of Education of the Montgomery County Public School System, advising me that if Willie Robert Bell attempted to enroll in Carver he could not do so because of his record which has been called to the attention of Mr. McKee.

Registration was heavy on September 6th and 7th. I checked after receiving the call from Mr. Garrett and found that Willie Robert Bell had made out a choice form on September 6 but that a program card had not been made out for him. On September 8, I found out that a program card had been made for Willie Robert Bell around 2 o'clock in the afternoon on September 7 by one of my faculty members. I called Willie Robert Bell to the office on September 8 and advised him that I had received instructions that he could not enroll at Carver High School at the present time.

Witness my hand this 14th day of September, 1966:

W. E. THOMPSON

(Sworn to September 14, 1966)

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Order on Petition of Plaintiffs

(Filed September 14, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon consideration of the motion of the plaintiffs seeking an order of this Court enjoining the defendants from refusing to admit and permit Willie Robert Bell to attend as a student at Sidney Lanier High School, the Court notes that the plaintiffs' petition filed herein on September 12, 1966, complains that Bell's expulsion was without a hearing and, for that reason, was in violation of due process. *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (5th Cir. 1961). Upon consideration of that aspect of plaintiffs' petition and the assurance on the part of defendants' counsel that a hearing, within a reasonable time, will be afforded Willie Robert Bell, it is considered appropriate to continue this matter until further order of this Court.

It is, therefore, the Order, Judgment and Decree of this Court that this cause be and the same is hereby continued until further order of this Court.

Done, this the 14th day of September, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

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Plaintiffs' Motion to Dismiss Petition

(Filed October 3, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now Plaintiffs, by and through their attorneys of record, and move the Court to dismiss the Petition of Willie Robert Bell heretofore filed herein and as grounds for said motion set out and assign the following:

1. That the attorneys for Plaintiffs, after careful consideration of the matters and things set out in the Petition here and above referred to, and after consultation with all the parties involved, have concluded that it is in the best interest of Petitioner Willie Robert Bell and Plaintiffs that this Petition be dismissed.

2. That the attorneys for the defendants and the attorneys for the Plaintiffs have agreed to a dismissal subject to the approval of the Court.

WHEREFORE Plaintiffs pray that the Petition filed on behalf of Willie Robert Bell be dismissed.

GRAY & SEAY
Attorneys for Plaintiffs

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Certificate of Service (omitted in printing)

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Order to Dismiss Petition

(Filed October 5, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon the motion of the plaintiffs, and without any objection by the defendants, the petition of Willie Robert Bell filed herein on September 12, 1966, is ORDERED to be and the same is hereby dismissed.

Done, this the 5th day of October, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

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Plaintiffs' Motion for Further Relief

(Filed April 11, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

1. In *United States and Linda Stout, et al.*, v. *Jefferson County Board of Education, et al.*, Fifth Circuit, No. 23345, 12/29/66 (adopted with modifications by the court, sitting en banc, 3/29/67), the United States Court of Appeals for the Fifth Circuit decided seven school desegregation cases from districts in Alabama and Louisiana, which control this cause. The court held, *inter alia*, that district courts in this circuit must enter the decree appended to the *Jefferson* opinion:

> We expect the provisions of the decree to be applied in proceedings involving . . . earlier court-approved plans which fall short of the terms of the decree. On motion by proper parties to reopen these cases, we expect these plans to be modified to conform with our decree. (Slip opinion, p. 113)

2. The desegregation plan in this case fails to fulfill the requirements set forth in the *Jefferson* decree. Plaintiffs are entitled, at a minimum, to the entry of the *Jefferson* decree. This relief must be granted immediately if relief is to be effective for the 1967-68 school year.

Particularly, plaintiffs request a 30 day registration period commencing May 1, 1967 for the 1967-68 school

year, or as soon thereafter as is practicable, notwithstanding any registration period which may have been completed.

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WHEREFORE, plaintiffs pray that after consideration of the above motion at the earliest possible date, this court enter the decree proposed by the United States Court of Appeals in its decision in *United States* v. *Jefferson County Board of Education, supra,* as the desegregation plan in the present case.

Respectfully submitted,

GRAY and SEAY
JACK GREENBERG
CHARLES H. JONES
HENRY M. ARONSON
Attorneys for plaintiffs

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Certificate of Service (omitted in printing)

LIBRARY
SUPREME COURT, U. S.

APPENDIX

VOLUME II

SUPREME COURT, U.S.
CLERK'S OFFICE

Supreme Court of the United States

OCTOBER TERM, 1968

Nos. 798, 997

UNITED STATES,

Petitioner,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

and

ADAM CARR, JR., ET AL.,

Petitioners,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 6, 1968
AND JANUARY 30, 1969
CERTIORARI GRANTED MARCH 3, 1969

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Order Requiring Defendants to Show Cause

(Filed April 28, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The plaintiffs having filed on April 11, 1967, their motion asking this Court to modify its decree heretofore entered in this case so it will conform with the requirements of *United States and Linda Stout, et al.* v. *Jefferson County Board of Education, et al.*, Fifth Circuit No. 23345, Dec. 29, 1966 (adopted with modifications by the Court, sitting en banc, March 29, 1967), and seeking an order of this Court directing the defendants to show cause why they should not be required to adopt desegregation plans conforming with the standards embodied in *United States and Linda Stout, et al.* v. *Jefferson County Board of Education, et al.*, it is the

ORDER, JUDGMENT and DECREE of this Court that the defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, George C. Starke, George A. Dozier, Dr. J. Edward Walker, Isabelle B. Thomasson and Dr. Robert Parker, members of the Montgomery County Board of Education, and Walter McKee, Superintendent of Education of Montgomery County, Alabama, appear before this Court at 9 a.m., May 25, 1967, in the courtroom of the United States District Court for this district, to show cause, if any they have, why they should not be

ordered to adopt desegregation plans for the Montgomery County, Alabama school system that comply with the standards embodied in *United States and Linda Stout, et al.* v.

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Jefferson County Board of Education, et al., and in Exhibit "A" to this Court's decree of March 22, 1967 (the Court being composed of three judges, one of whom was the undersigned), made and entered in *Anthony T. Lee, et al.*, Plaintiffs, *United States of America*, Plaintiff-Intervenor and Amicus Curiae, v. *Macon County Board of Education, et al.*, Defendants, Civil Action No. 604-E, and why they should not be ordered to put such plans into effect in the Montgomery County, Alabama school system, commencing with the 1967-68 school year. It is further

ORDERED that the United States as *amicus curiae*, acting through its attorneys of record, appear on said date and participate in said proceedings to the extent considered necessary and appropriate. It is further

ORDERED that the Clerk of this Court attach hereto copies of the opinion and decree made and entered on March 22, 1967, in *Lee, et al., United States of America* v. *Macon County Board of Education, et al.*, Civil Action No. 604-E.

Done, this the 28th day of April, 1967.

FRANK M. JOHNSON, JR.
Chief Judge

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OPINION ANNEXED TO ORDER TO SHOW CAUSE

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CIVIL ACTION No. 604-E

ANTHONY T. LEE and HENRY A. LEE, by Detroit Lee and Hattie M. Lee, their parents and next friends; PALMER SULLINS, JR., ALAN D. SULLINS and MARSHA MARIE SULLINS, by Palmer Sullins and Della D. Sullins, their parents and next friends; GERALD WARREN BILLES and HELOISE ELAINE BILLES, by I. V. Billes, their father and next friend; WILLIE M. JACKSON, JR., by Mabel H. Jackson, his mother and next friend; WILLIE B. WYATT, JR., and BRENDA J. WYATT, by Willie B. Wyatt and Thelma A. Wyatt, their parents and next friends; NELSON N. BOGGAN, JR., by Nelson Boggan, Sr., and Mamie Boggan, his parents and next friends; WILLIE C. JOHNSON, JR., BRENDA FAYE JOHNSON and DWIGHT W. JOHNSON, by Willie C. Johnson and Ruth Johnson, their parents and next friends, and WILLIAM H. MOORE and EDWINA M. MOORE, by L. James Moore and Edna M. Moore, their parents and next friends,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor and Amicus Curiae,

vs.

MACON COUNTY BOARD OF EDUCATION, MADISON DAVIS, Chairman; JOHN M. DAVIS, B. O. DUKES, F. E. GUTHRIE, and FRANCES (MRS. J. R.) RUSH, and C. A. PRUITT, Superintendent of Schools of Macon County, Alabama; LURLEEN BURNS WALLACE, in her capacity as Governor of the State of Alabama, and as President of Alabama State Board of Education; ALABAMA STATE BOARD OF EDUCATION; ERNEST STONE, Secretary and Executive Officer of Alabama State Board of Education; JAMES D. NETTLES, ED DANNELLY, MRS. CARL STRANG, FRED L. MERRELL, W. M. BECK, VICTOR P. POOLE, W. C. DAVIS, CECIL WORD and HAROLD C. MARTIN, as members of Alabama State Board of Education,

Defendants.

Before RIVES, *Circuit Judge,* and GROOMS and JOHNSON, *District Judges.*

PER CURIAM:

In these supplementary proceedings, this Court is once

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again called upon to consider whether the defendants[1] Lurleen Burns Wallace as Governor of the State of Ala-

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[1] Pursuant to Rule 25(d), Federal Rules of Civil Procedure, this Court on January 23, 1967, ordered that Lurleen Burns Wallace in her capacity as Governor of the State of Alabama and as President of the Alabama State Board of Education, Ernest Stone, Secretary and Executive Officer of the Alabama State Board of Education; Ed Dannelly and Mrs. Carl Strang as members of the Alabama State Board of Education, be substituted as defendants for the named defendants George C. Wallace, Austin R. Meadows, J. T. Albritton and J. P. Faulk, Jr., respectively.

bama and as President of the Alabama State Board of Education, Ernest Stone as Secretary and Executive Officer of the Alabama State Board of Education (sometimes referred to as the State Superintendent of Education), and the individual members of the Alabama State Board of Education, have continued, and are continuing, to use their authority to operate throughout the State of Alabama a dual school system based on race.

This Court is also once again called upon to pass upon the constitutional validity of a tuition grant law (Title 52, § 61(8), Code of Alabama) passed by the Legislature of the State of Alabama and approved by the Governor on September 1, 1965.

I. Procedural History

This action was commenced over four years ago by Negro parents of school-age children, against the Macon County Board of Education, seeking to desegregate the public schools in Macon County, Alabama. In July 1963 the United States was added as a party and as amicus curiae in order that the public interest in the administration of justice would be represented. After a full hearing, this Court in August 1963 made its findings and conclusions and ordered the public schools in Macon County, Alabama, desegregated. *Anthony T. Lee, et al.,* Plaintiff, *United States of America,* Plaintiff and Amicus Curiae v. *Macon County Board of Education,* MD Ala., August 22, 1963, 221 F. Supp. 297. Thereafter, on three separate occasions during the 1963-64 school year, this Court found it necessary to enjoin state officials from various forms of interference with the peaceful and orderly desegregation of schools in Macon County.[2]

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[2] *United States* v. *Wallace,* 222 F. Supp. 485 (September 1963); *Lee* v. *Macon County Board of Education,* order of February 3, 1964; *United States* v. *Rea,* 231 F. Supp. 772 (February 1964).

In February 1964 plaintiffs filed a supplemental complaint, adding as defendants George C. Wallace as President of the Alabama State Board of Education, Austin R. Meadows, Executive Officer and Secretary of the Alabama State Board of Education, and other individual members of the State Board of Education. In this supplemental complaint the plaintiffs requested this Court (1) to enjoin these defendants from operating a dual school system based upon race throughout the State of Alabama, (2) to

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enter an order requiring state-wide desegregation of schools in the State of Alabama, (3) to enjoin the use of state funds to perpetuate the dual school system, and (4) to enjoin as unconstitutional the tuition grant law of the State of Alabama (Chapter 4B [§§ 61(13) through 61(21)], Title 52, Code of Alabama). At this stage of the proceeding, the Chief Judge of the United States Court of Appeals for the Fifth Circuit, in response to a request of the district judge, constituted a three-judge court pursuant to §§ 2281 and 2284, Title 28, United States Code.

After an oral hearing, a review of the evidence and arguments of counsel, this Court in July 1964[3] made its findings and conclusions to the effect that there was a dual school system based upon race that was maintained and operated throughout the State of Alabama and that it was the policy of the state and, in particular, the Governor, George C. Wallace, as President of the Alabama State Board of Education; Austin R. Meadows, Secretary and Executive Officer of the Alabama State Board of Education, and the individual members of the Alabama State

[3] *Anthony T. Lee, et al.*, Plaintiffs, *United States of America*, Plaintiff and Amicus Curiae v. *Macon County Board of Education*, MD Ala., July 13, 1964, 231 F. Supp. 743.

Board of Education, to promote and encourage the implementation of that racial policy in the operation of the Alabama public schools. It was also concluded that Alabama's tuition grant law was nothing more than a sham established for the purpose of financing with state funds a white school system in the State of Alabama. Accordingly, the defendant state officials were enjoined from:

> Interfering with, preventing or obstructing by any means, the elimination of racial discrimination by local school officials in any school district in the State of Alabama;
>
> Approving, authorizing or paying any tuition grant or grant-in-aid under the provisions of Chapter 4B [Sections 61(13) through 61(21)] of Title 52 of the Alabama Code for the attendance of any person in a school in which enrollment or attendance is limited or restricted upon the basis of race or color;
>
> Failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimination of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

In August 1966 the United States of America was permitted to file a supplemental complaint in intervention wherein the United States as a party attacked the con-

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stitutionality of Alabama's new tuition grant statute[4]

[4] The 1965-66 tuition grant laws were not in the form of amendments to the old tuition grant statute; instead, they were designated as § 61(8), Title 52, Code of Alabama.

passed after this Court enjoined, in its order of July 1964, the paying of any tuition grant or grant-in-aid under the provisions of Chapter 4B, Title 52 of the Alabama Code. The complaint in intervention by the United States attacked the new statute on the basis that it was for no purpose other than to perpetuate racial segregation in the public schools of Alabama. This aspect of the case was submitted on stipulation and is discussed later in this opinion.

In September 1966 and in November 1966, the plaintiffs filed additional supplemental complaints again asking for a state-wide desegregation order and an injunction against the use of state funds to support a dual school system. Following extensive discovery by all parties, the case was heard in November 1966 and is now submitted upon the evidence and the parties' oral arguments and briefs.

II. Factual History

In the July 1964 order, this Court found that the defendant George C. Wallace, President of the Alabama State Board of Education, the State Board of Education, the several individual members thereof, and the Secretary and Executive Officer of the Alabama Board of Education, Austin R. Meadows, had demonstrated that they had enormous authority and power over the actual operation of the various local school systems throughout the state. This conclusion was based on the actual assumption or usurpation of authority by these defendants over the local school boards exemplified by their total control, when they chose to exert it, over the Macon County school system, and also by the general statutory power granted to these various officials to supervise and control the public schools in the State of Alabama. Examples of the Governor's actions and control, as found previously by this Court, are:

As stated above, acting pursuant to this Court's order, the defendant Macon County Board of Education assigned 13 Negro pupils to the Tuskegee Public High School. These pupils were assigned in grades eight through twelve and were scheduled to begin school on September 2, 1963. Early on the morning of September 2, an Alabama State trooper visited the home of Macon County Superintendent Pruitt and presented him with an order of Governor George C. Wallace, who is also under the law of Alabama the ex officio President of the Alabama State Board of Education. This Executive Order stated, in part, as follows:

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WHEREAS, there now exist in the State of Alabama conditions calculated to result in a disruption of the peace and tranquility of this State and to occasion peril to the lives and property of the citizens thereof, this situation resulting from the threat of forced and unwarranted integration of the public schools of this State; and,

* * *

NOW, THEREFORE, I, George C. Wallace, as Governor of the State of Alabama, and in conformity with the Constitutional and statutory power vested in me as Governor of said State, do hereby order and direct the Macon County Board of Education, Macon County, Alabama, to delay the opening of Tuskegee High School for a period of one week, until, to-wit: Monday, September 9, 1963, with the sole and express purpose of allowing the Governor of the State of Alabama to preserve the peace, maintain domestic

tranquility and to protect the lives and property of all citizens of the State of Alabama.

DONE this the 2nd day of September, A. D., 1963.

/s/ George C. Wallace
GEORGE C. WALLACE, AS
GOVERNOR OF THE
STATE OF ALABAMA

Acting upon this direction of Governor Wallace, the State troopers surrounded the Tuskegee High School, and neither the pupils nor teachers were permitted to enter the school. Tuskegee High School remained closed for one week. On September 9, 1963, Governor Wallace issued another Executive Order, which stated, in part:

> NOW, THEREFORE, I, George C. Wallace, as Governor of the State of Alabama, and in conformity with the Constitutional and statutory power vested in me as Governor of said State, do hereby order and direct that no student shall be permitted to integrate the public schools of the City of Tuskegee, Alabama.

Governor Wallace announced publicly that the State Legislature had provided for grants-in-aid to private schools and assured the organizers of the Macon Academy that the Macon County Board of Education would cooperate in making grants-in-aid available through the use of its statutory authority to provide such aid to students in lieu of operating a particular public school.

Examples of the actions and control of the State Board of Education and its executive officers, as previously found by this Court, are:

> In January, 1964, the Alabama State Board of Education passed the following resolution:
>
> BE IT RESOLVED That the State Board of Education hereby orders that Tuskegee High School be closed, all grades above the seventh grade, and that the teachers be transferred to other schools in the
>
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>
> Macon County School System and the children transferred to other schools in the Tuskegee area, in accordance with the State Board of Education policy of closing schools where the teacher load is not sufficient to justify paying teachers, and in accordance with Title 52, Code of Alabama, 1940, as amended; and
>
> BE IT FURTHER RESOLVED That the Alabama State Board of Education hereby orders the Macon County Board of Education to provide school bus transportation for the children attending the Shorter and Notasulga schools in Macon County.

On the same date, this resolution was wired by the State Superintendent of Education to the Macon County Superintendent of Education. In the same session, the State Board directed the Governor to take whatever steps were necessary to execute its directive to close the Tuskegee Public High School above grade seven. In compliance with the directive of the State Board, the County Board of Education closed the

Tuskegee High School effective February 3, 1964, and directed that all students then attending Tuskegee High School (12 Negro and no white students) be transferred to other schools in the "Tuskegee area." The County Board of Education further directed that the teachers of the Tuskegee High School be assigned to such other schools in the county as might be designated. The effect of the State Board's resolution facilitated the transportation of white children to the "all white" Shorter and Notasulga schools and by limiting the Negro pupils to "other schools in the Tuskegee area," required them to return to the "all Negro" Tuskegee Institute High School in Tuskegee, Alabama. When on February 3, 1964, the Negro pupils were barred from the Tuskegee High School, this Court, upon proper motion, issued a temporary restraining order, the effect of which did not require the reopening of the Tuskegee High School for the 12 Negro pupils, but ordered these Negro pupils admitted to Shorter and Notasulga on the same basis as the white pupils who were transferred from the Tuskegee High School when the Negro pupils first attended in September, 1963.

In February, 1964, the State Board of Education adopted other resolutions directing the Macon County Board to provide financial assistance under the grant-in-aid law:

> Be It Resolved That the Macon County Board of Education is directed to forthwith, February 4, 1964, provide financial assistance to parents or guardians of students under the grant-in-aid law of the State of Alabama as set forth in Title 52, of the 1940 Code of Alabama, as amended.

BE IT RESOLVED That the State Board of Education deplores the order of Judge Johnson and pledges every resource at our command to defend the people of our State against every order of the Federal courts in attempting to integrate the public schools of this State and will use every legal means at our command to defeat said integration orders and pledges our full support to the local boards of education in supporting the public school system as now

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constituted with the law, and will give every assistance possible to support every effort to maintain our way of life and high educational standards for all citizens of our State.

Based upon such findings as reflected by the evidence, this Court found that "the State of Alabama has an official policy favoring racial segregation in public education," and that, strictly in accordance with this official policy, "the State of Alabama has operated and presently operates a dual school system based upon race." In the July 1964 order, the Court further found and concluded that "the purpose of said State officials, as evidenced by their actions already recited, was clearly to prevent or impede any desegregation through their unlawful interference with the city and county school boards' attempting to comply with the law." It was only "through the exercise of considerable judicial restraint" that this Court refrained in July 1964 from requiring these defendant state officials to exercise their control and authority over the various local school boards throughout the state for the purpose of desegregating the school systems on a state-wide basis and to enjoin said defendants from using state funds for the purpose of

perpetuating a dual school system based upon race. The exercise of restraint in that instance was prompted by the desire on the part of each member of this Court to afford these defendants every opportunity to comply in good faith with their affirmative constitutional duty to desegregate the state's public schools. See *Cooper* v. *Aaron,* 358 U. S. 1 (1958). *Board of Public Instruction of Duval County, Fla.* v. *Braxton,* 326 F. 2d 616, 5th Cir. 1964, cert. denied 377 U. S. 924. We were, however, careful to admonish:

> Needless to say, it is only a question of time until such illegal and unconstitutional support of segregated school systems must cease. These State officials and the local school officials are now put on notice that within a reasonable time this Court will expect and require such support to cease. These school officials should now proceed to formulate and place into effect plans designed to make the distribution of public funds to the various schools throughout the State of Alabama only to those schools and school systems that have proceeded with "deliberate speed" in the desegregation of their schools and school systems as required by *Brown* v. *Board of Education,* supra.

III. The Merits

Over two and one-half years have now elapsed since that order was entered. During this period the focus on the rights of American citizens, regardless of their race or color—and in particular on the right of Negro children to attend public schools without discrimination on account of their race or color—has increasingly sharpened. The Congress of the United States in Public Law 88-352 (Civil

Rights Act of 1964) has declared it to be a national policy that students shall have the right to attend public schools without regard to their race, color, religion or national origin; that the term "public school" means any elementary or secondary educational institution, or any institution of higher education or any technical or vocational school above the secondary school level operated by a state, subdivision of a state, or governmental agency within a state, or operated through the use of governmental funds.[5] The Attorney General was given authority to institute suits against school systems for the purpose of furthering "the orderly achievement of desegregation in public education . . . ."[6] With the knowledge that the public school systems throughout the United States were receiving federal financial assistance in large quantities, the Congress declared, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[7] Negroes themselves have begun filing individual lawsuits in greater volume than ever before, for the purpose of desegregating public school facilities. These various efforts, insofar as the Alabama school system is concerned, have met the relentless opposition of these defendant state officials. Not only have these defendants, through their control and influence over the local school boards, flouted every effort to make the Fourteenth Amendment a meaningful reality

[5] Title IV, §§ 401-406.

[6] Title IV, §§ 407-410.

[7] Title VI, § 601.

to Negro school children in Alabama; they have apparently dedicated themselves and, certainly from the evidence in this case, have committed the powers and resources of their offices to the continuation of a dual public school system such as that condemned by *Brown* v. *Board of Education*, 347 U. S. 483 (1954). As a result of such efforts on the part of those charged with the duty and responsibility under the law as announced in 1954 by the Supreme Court in *Brown*, by the Congress of the United States in the Civil Rights Act of 1964, and, more specifically, by this Court in its July 1964 order, today only a very small percentage of students in Alabama are enrolled in desegregated school systems.[8] Based upon this fact and a continuation of such

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conduct on the part of these state officials as hereafter outlined, it is now evident that the reasons for this Court's reluctance to grant the relief to which these plaintiffs were clearly entitled over two years ago are no longer valid.

It is considered appropriate to restate the general scope of the control and authority of these defendant officials over the public schools in Alabama. As noted earlier, the defendant officials have extensive powers over this public school system. Section 262 of the Alabama Constitution provides that "The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties . . . shall be fixed by law." The State Board of Education has similar duties: "[the Board] shall exercise, through the state superintendent of education and his pro-

[8] The percentage of students enrolled in schools in which they are in a racial minority are: White, 0.003%; Negro, 0.34%. The 1965-66 Annual Reports to the Alabama State Department of Education reflect that of the 294,734 Negro children attending public schools in Alabama only 1,009 were attending desegregated schools.

fessional assistants, general control and supervision over the public schools of the state . . . ." Title 52, §14, Code of Alabama. The Legislature has also provided that "The state superintendent of education shall execute the educational policies of the state board of education." Title 52, §45, Code of Alabama.

The State Board is expressly authorized to adopt rules and regulations governing school construction, school sanitation, and physical examination of school children, and must enforce all rules relating to "school health, compulsory education, and child conservation." Title 52, §15, Code of Alabama. It controls the grading and standardizing of public schools,[9] the minimum contents of courses of study,[10] and the training and certification of teachers.[11] The State Board of Education is further charged with the duty of "equalizing the public school facilities throughout the State" and administers a fund for that purpose. Title 52, §33, Code of Alabama. The State Board and the State Superintendent together exercise a broad power of review of actions of local school boards and local superintendents in "matters relating to finance, and other matters seriously affecting the educational interest." Title 52, §§34 and 47, Code of Alabama.

The Board also has broad powers to effectuate and sup-

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plement other powers previously expressly conferred. Title 52, §31, Code of Alabama.

It was on the basis of these provisions that the Supreme Court of Alabama was able to conclude: "Every public

[9] Title 52, § 16, Code of Alabama.

[10] Title 52, § 17, Code of Alabama.

[11] Title 52, § 20, Code of Alabama.

school is a state school, created by the state, supported by the state, supervised by the state, through state-wide and local agencies, taught by teachers licensed by the state, employed by agencies of the state." *Williams, Supt. of Banks, et al.* v. *State, For Use and Benefit of Pickens County, et al.*, 230 Ala. 395, 397, 161 So. 507, 507-08 (1935).[12]

To maintain the racial characteristics of the Alabama public school system, the defendant state officials have used their power in essentially two ways. First, they have used their authority as a threat and as a means of punishment to prevent local school officials from fulfilling their constitutional obligation to desegregate schools, and, second, they have performed their own functions in such a way as to maintain and preserve the racial characteristics of the system. No useful purpose would be served by reiterating the machinations surrounding the closing of schools in Tuskegee, Alabama, and the Governor's abortive efforts to thwart the desegregation of Tuskegee High School, since this episode is adequately set out in this Court's opinion of July 1964 (231 F. Supp. 743). Such conduct, and its continuation as hereinafter found, reveals a broad spectrum of state interference with local desegregation efforts.

Title VI of the Civil Rights Act of 1964, as stated earlier, prohibits discrimination in federally assisted programs. This law became effective July 2, 1964. In December 1964 the Secretary of Health, Education and Welfare of the United States published regulations for compliance with Title VI programs administered by his department.[13] These regulations require, among other things, that any

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[12] *Accord: State* v. *Tuscaloosa County, et al.*, 233 Ala. 611, 172 So. 892 (1937).

[13] 45 C.F.R. 80.1-80.9.

application for federal financial assistance be accompanied by an assurance that the program will be conducted, or the facility operated, on a nondiscriminatory basis.[14]

On March 4, 1965, State Superintendent of Education Meadows submitted to the United States Commissioner of Education state-wide assurance of compliance. When Dr. Francis Keppel, United States Commissioner of Education, questioned this "assurance," the State Superintendent of Education reacted by attacking Dr. Keppel's letter through a news release to the superintendents of the local school

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systems throughout Alabama. Approximately two weeks after filing his state-wide assurance of compliance, Superintendent Meadows told the Alabama Teachers Association:

> . . . The minority race has a new junior college in Mobile and a new one is being established in Jefferson County . . .
>
> • • • • • •
>
> Every type of education facility available to the majority group in Alabama has been made available to the minority group . . .

His address ended with the following plea:

> . . . Will this Nation let Alabama continue its progress, nurture its fine culture, and further its goal of peaceful existence in the only way it knows to exist or will all of this be destroyed by outsiders who either do not understand or do not care enough for either race in Alabama?

[14] 45 C.F.R. 80.4.

In April 1965 the United States Commissioner of Education issued "guidelines" requiring the school systems to take immediate steps to desegregate students, facilities and programs.[15] Pursuant to these guidelines, a number of Alabama school districts decided to desegregate all twelve grades for the 1965-66 school year. In August 1965, and after *Singleton* v. *Jackson Municipal Separate School District,* supra, Governor George C. Wallace sent the Superintendent of each such district the following telegram:

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[15] Nothing said here should be construed, inferentially or otherwise, as a decision by this Court on the validity or invalidity of the *1966* guidelines as issued by the United States Commissioner of Education, since that question, and other related questions, is presently pending in a case styled *Alabama NAACP State Conference of Branches, et al.,* Plaintiffs, *United States of America,* Plaintiff and Amicus Curiae v. *George C. Wallace, et al.,* Defendants, being heard by a separate three-judge court in this district. *Furthermore, in this case we deal solely with constitutional requirements on the part of public officials not to discriminate on the basis of race in the operation of public schools and with constitutional requirements on the part of public officials to take affirmative action to disestablish state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in their activities and in their operation of the public school system in the State of Alabama.* It is felt that it is necessary, however, to discuss the conduct of some of these defendants in connection with the compliance or noncompliance of the *1965* guidelines on the part of local school officials for the purpose of demonstrating the extent of the control exercised by these state officials over the local school boards throughout the state. In this connection, it should be noted that in June 1965 the United States Court of Appeals for the Fifth Circuit recognized the guidelines, as then issued (1965 guidelines), as "standards for compliance with the requirements of Title VI of the Civil Rights Act of 1964." *Singleton* v. *Jackson Municipal Separate School District,* 348 F. 2d 729, 731. For the purpose of emphasis, we reiterate that in this case this Court is not concerned with the validity of any guidelines issued by the United States Commissioner of Education in either 1965 or 1966.

WE HAVE BEEN INFORMED THAT YOUR SCHOOL BOARD HAS VOLUNTARILY SUBMITTED A SO-CALLED COMPLIANCE PLAN COVERING ALL GRADES IN YOUR SCHOOL

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SYSTEM. AS YOU KNOW, WE HAVE NEVER ASKED ANY SCHOOL BOARD TO VIOLATE ANY PROVISION OF FEDERAL OR STATE LAW. IT IS OUR CONSIDERED JUDGMENT THAT ANY PLAN FOR SO-CALLED NON-DISCRIMINATION IN ALL GRADES IS BEYOND EVEN THE MINIMUM REQUIREMENTS SET BY THE U S COMMISSIONER OF EDUCATION. IN FACT, THE DEPARTMENT HAS ACCEPTED AS MINIMUM COMPLIANCE SOME PLANS COVERING ONLY FOUR GRADES. IT IS ALSO READILY APPARENT THAT THOSE SCHOOL SYSTEMS WHICH HAVE BEEN REQUIRED TO DESEGREGATE UNDER FEDERAL COURT ORDER ARE NOT REQUIRED TO DESEGREGATE ALL 12 GRADES IN ONE YEAR. WE THINK IT WOULD BE ADVISABLE FOR YOUR SCHOOL BOARD TO RECONSIDER YOUR ACTION IN THE SUBMISSION OF YOUR COMPLIANCE PLAN.

On September 3, 1965, the Governor sent them another telegram:

THIS FOLLOW-UP TELEGRAM COMES AFTER A MEETING OF THE STATE BOARD OF EDUCATION WHICH PASSED A RESOLUTION YESTERDAY EXPRESSING GRAVE CONCERN ABOUT THE FUTURE OF PUBLIC EDUCATION

IN ALABAMA IN VIEW OF THE FACT THAT SOME SCHOOL BOARDS HAVE GONE BEYOND THE MAXIMUM REQUIREMENTS OF COURT PRECEDENTS IN EXECUTING COMPLIANCE PLANS. WE AGAIN RESPECTFULLY CALL TO YOUR ATTENTION THAT THE EXECUTION AND ADMINISTRATION OF PLANS BEYOND THOSE REQUIRED IS NOT IN THE INTEREST OF PUBLIC EDUCATION IN THE STATE OF ALABAMA. SUCH WAS ENUNCIATED BY THE SOUTHERN GOVERNORS MEETING IN ATLANTA. IN VIEW OF THE FACT THAT UNDER THE PUPIL PLACEMENT ACT THE ADMINISTRATION AND ASSIGNMENT OF PUPILS IS YOUR PREROGATIVE, WE AGAIN RESPECTFULLY REQUEST THAT YOU TAKE WHATEVER ACTION IS NECESSARY TO SEE THAT THE ADMINISTRATION AND EXECUTION OF THESE PLANS DO NOT GO BEYOND THE REQUIREMENTS OF FEDERAL COURT ORDERS OF FIVE GRADES. WE URGE CAREFUL CONSIDERATION OF THE RESOLUTION PASSED UNANIMOUSLY BY THE STATE BOARD OF EDUCATION, A COPY OF WHICH WILL BE FORWARDED TO YOU AND WHICH WE WHOLEHEARTEDLY ENDORSE. WE COMMEND THE DILIGENT WORK OF THE GREAT MAJORITY OF LOCAL SCHOOL BOARDS WHO HAVE DONE AN OUTSTANDING JOB UNDER EXTREMELY TRYING CIRCUMSTANCES.

On September 3, 1965, Superintendent of Education Meadows sent the local school officials a copy of a resolu-

tion by the State Board of Education urging them "to take no action in the administration and execution of compliance plans which are not required by law or court order . . . ." Superintendent Allen Thornton of Lauderdale County, who had attempted to justify his board's actions to the Governor, received the following telegram from the Governor:

> YOUR STATEMENT TO THE GOVERNORS OFFICE ON THURSDAY SEPTEMBER 2 THAT YOU ARE SATISFIED WITH THE PUBLIC SCHOOL SITUATION IN LAUDERDALE COUNTY WHERE MORE NEGRO PUPILS ARE ENROLLED IN THE PREVIOUSLY ALL WHITE SCHOOLS THAN ARE IN EITHER OF THE LARGE CITIES OF BIRMINGHAM OR MONTGOMERY, AND YOUR FURTHER STATEMENT THAT YOU PLAN TO ELIMINATE EVENTUALLY ALL NEGRO SCHOOLS IN THE COUNTY AND TRANSFER THE PUPILS TO WHITE SCHOOLS COULD DO MORE TO DESTROY THE PUBLIC EDUCATIONAL SYSTEM OF ALABAMA THAN ANY ACTION SINCE THE INFAMOUS 1954 DECISION OF THE UNITED STATES SUPREME COURT. THOSE WHO HAVE WORKED DILIGENTLY TO RAISE SUPPORT OF PUBLIC EDUCATION TO
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> A RECORD HIGH LEVEL IN THE HISTORY OF OUR STATE RESENT AND REJECT THIS ATTITUDE. WE CALL UPON YOU TO ALIGN YOUR POLICIES WITH THE MINIMUM REQUIREMENTS OF THE LAW AND OF COURT ORDERS. (COPIES OF THIS TELEGRAM SENT TO FLOR-

ENCE TIMES, FLORENCE, ALA. ASSOCIATED PRESS, MONTGOMERY, ALA., AND UNITED PRESS INTERNATIONAL, MONTGOMERY, ALABAMA)

These telegrams had their effect. For instance, on September 6, 1965, the Choctaw County Board of Education resolved:

> That due to the change in conditions, particularly within the past few days, the Board concludes it is for the best interest of the children attending the schools of Choctaw County, Alabama, their safety and welfare, for the continued orderly operation of the schools in the County, and for the prevention of violence which would likely result in serious consequences adversely affecting the orderly operation of the schools, the plan of desegregation of the schools of Choctaw County, Alabama, adopted by this Board on August 23, 1965, be and the same is hereby revoked.

The reaction of these defendant state officials and their conduct and the responses by the local school officials concerning the 1966 guidelines issued on March 7, 1966, by the United States Department of Health, Education and Welfare, for the reasons set forth by this Court in footnote 15, supra, will not be made a part of the findings and conclusions of this Court in this case.

Conduct on the part of these state officials to thwart desegregation of the public school system in the state continued, and on July 1, 1966, Alabama State Superintendent of Education Meadows expressed his views on segregation

in a parable which he circulated to each local superintendent of education throughout the State of Alabama,[16]

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In August 1966 the Tuscaloosa County School Board formally assigned two Negro teachers to two predominantly white schools and four white teachers to two Negro schools. Shortly after school opened in Tuscaloosa County and these assignments became known, the State Superintendent of Education telephoned the Tuscaloosa County Superintendent of Education, Dr. W. W. Elliott, and recommended that the two Negro teachers who had been assigned to predominantly white schools be transferred to

[16] " 'Segregation' is a perfectly good word. It has been practiced down through the ages for good results. The Lord set aside or segregated fruit from the apple tree in the Garden of Eden from Adam and Eve, but Eve persuaded Adam to taste the fruit and they were both banished from the Garden of Eden and honest men and women have had to work for their living ever since.

"Segregation has been used by people of the civilized world for man's greatest advancement. Matrimony, the most sacred of all bonds for men and women, is the highest type of segregation In matrimony, husband and wife bind themselves to cleave to one another, even to the extent of forsaking all others if necessary. A great ministerial commandment has been the public pronouncement at the wedding ceremony 'What God has joined together let no man put asunder.' Without this bond of segregation, there would be no family unit. One of the Ten Commandments forbids breaking this human bond of segregation. Segregation is the basic principle of culture. The good join together to segregate themselves from the bad.

"Segregation is one of the principles of survival throughout the animal kingdom. Animals, in many instances, join their own kind to defend themselves by numbers against other animals that would destroy them without such segregated bond. Birds of a feather truly flock together. Wild geese fly across this continent in 'V' formation, but they never join any other flock of birds. Wild duck fly together and not with other birds. The wild eagle mates with with another eagle and not with any other bird. Red birds mate with red birds, the beautiful blue birds mate with other blue birds, and so on through bird life.

(*footnote continued on next page*)

other schools. Dr. Meadows advised the local school official that he was calling as a constitutional officer of the State of Alabama and that the assignment of Negro teachers to white schools was "against the law" and "public policy" of the state. A few days later Governor George C. Wallace, in a press conference, announced that he would use the police power of the state to maintain peace and requested that the two Negro teachers be removed and reassigned forthwith. Later, still in September 1966, State Superintendent Meadows again endeavored to persuade the Tuscaloosa County Superintendent of Education to reassign the Negro teachers. About the same time, Attorney Hugh Maddox, Legal Adviser to the Governor, telephoned the Tuscaloosa County Superintendent and informed him that, "It [is] the public policy of the State that Negro teachers not teach white children" and that the Governor would use his police power to enforce the law. Dr. Elliott insisted that these Negro teachers were fully qualified and did not agree to reassign them. On October 17, 1966, the defendant Meadows, again by telephone, advised Dr. Elliott that the Governor suggested that two additional teacher units be allotted to the Tuscaloosa County school system provided the students being taught in white schools by the two Negro teachers were allowed the freedom to choose a white teacher. The State Board of Education

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"There can be segregation without immoral discrimination against anyone. Integration of all human life and integration of all animal life would destroy humanity and would destroy the animal kingdom. A time of reckoning must come in this United States of America on the fundamental principles of segregation and non-discrimination which can be achieved without destroying segregation in its true sense."

also promised funds to the Tuscaloosa County school system for additional classroom space to accommodate two additional white teachers. These state officials also made it clear that similar measures would be taken in other communities if Negro teachers were assigned to teach white students. A news release circulated by Dr. Meadows on October 25, 1966, to all city and county superintendents and to all news media was as follows:

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> In complete accord and with full approval of Governor George C. Wallace, any county or city board of education will be allocated a teacher unit and apportionment of funds therefor where such board employs a teacher for pupils to transfer from a teacher of the opposite race to a teacher of their own race by freedom of choice of such pupils and their parents. Two such teacher units have already been allocated to a county board of education in which thousands of people filed a petition for such relief, both with the county board of education and the Governor of Alabama.

The foregoing findings serve to illustrate that the actions on the part of the defendant Alabama officials have been designed to perpetuate the racially segregated public school system in the State of Alabama. These actions have been to some extent, as noted, dramatic interference with local efforts to desegregate public schools. However, the most significant action by these defendant state officials, designed to maintain the dual public school system based upon race, is found in the day-to-day performance of their duties in the general supervision and operation of the system.

A. School Construction and Consolidation

The State Board of Education and its Secretary and Executive Officer have been vested by statute with general supervisory powers over public education in Alabama. Code of Alabama, Title 52. The State Board is specifically authorized to adopt rules and regulations "for the proper construction of school buildings." Title 52, Section 15, Code of Alabama. For approximately fifty years, the State Department of Education has conducted periodic surveys of the Alabama school system. These surveys are for the purpose of enabling that department to make decisions and recommendations concerning the location, construction, consolidation, expansion and abandonment of schools and school buildings. The factual information is obtained from field inspections and relates to the distribution of student population within the school districts, the location, capacity and physical condition of school buildings, and other information concerning school sites. This information is then evaluated by the State Superintendent and the State Board of Education. Certain standards regarding the adequacy of physical structures have been established by the State Department; for instance, standards respecting the minimum size of school sites, minimum student standards, and minimum teacher standards. On the basis of the information gathered in the surveys and these standards, the survey teams make recommendations and classifications. First, they classify the school buildings as either "suitable for permanent use," "suitable for temporary use," or "should be abandoned." Second, recommendations are made concerning the consolidation of existing schools. Third, recommendations are made concerning

where new schools should be constructed or existing facilities enlarged. This information, together with the recommendations, is published by the State Department of Education in a Survey Report after the findings and recommendations are approved by the State Superintendent of Education. To a large extent, these recommendations—of necessity—are controlling upon the local school boards, since local boards that ignore them are penalized through the use of regulations that have been adopted by the State Board and through the use of other obligations such as those governing the allocations of state funds under the Minimum Program Fund[17] for teachers' salaries.

Other regulations establish a method of calculating the number of teacher units earned by and to be awarded each school. Transportation allowances to the local school districts are made in recognition of the survey recommendations, and the Survey Reports determine, to a large extent, the State Superintendent's approval or disapproval of sites for new school construction or existing school expansion. In each instance, the local school board must obtain the approval of the State Superintendent as to the location and need for expansion; the approval of the State Superintendent is also needed for construction projects, since the principal source of construction funds comes from state bond issues. The State Superintendent's approval on school construction projects is important, even where local funds are used, since local boards of education cannot issue warrants without the specific approval of the State Superintendent of Education. Title 52, Code of Alabama, §§ 216-218, 235 (4). Furthermore, the Governor and the State Superintendent of Education constitute a majority

[17] Title 52, §§ 208-215, Code of Alabama.

of the Public School and College Authority. This agency has the power to establish priorities for projects and to make funds more readily available to local school systems.

The evidence in this case is absolutely overwhelming that the State Board of Education and the Alabama Superintendent of Education, with the assistance of their staff in the State Department of Education, have exercised extensive control over school construction and consolidation in such a manner as to perpetuate a dual public school system based upon race and to interfere with the orderly desegregation of the public schools in the State of Alabama. This discriminatory course of conduct on the part of these defendants has continued and persisted since this Court's order of July 1964, for instance, the interference of State Superintendent Meadows and the Governor with the Tuscaloosa County Board of Education and their offer

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to that local board regarding construction funds. Such an offer could have been for no purpose other than to thwart the efforts of that local board to desegregate the faculties of its schools. Furthermore, the use of that authority and control on the part of these defendants over school construction has not been confined to manipulating the availability of funds. For instance, a more insidious method of control over local boards for the purpose of perpetuating a dual public school system based upon race has been with respect to school construction and consolidation. This is found in the judgments and recommendations contained in the school surveys. The survey recommendations regarding consolidation strictly observe the racially segregated character of the schools. In Calhoun County—to take but one example—rather than recommend that the local board close down an inferior Negro school

(Hawkins) and consolidate it with a nearby white school (Bynum), the survey recommended, instead, that the Negro students from the Hawkins School be transported across the county to Calhoun County Training School, a Negro school. Not only was the Calhoun County Training School a greater distance from Hawkins, which necessitated busing for the purpose of maintaining segregation, but, compared to Bynum, the physical facilities were significantly inferior and less room was available for the Negro students who were bused from Hawkins. The Survey Report that was then in existence reflected that the Calhoun County Training School to which the Hawkins Negro students were transported "is located on an inadequate site about which little can be done." Such a method of consolidation was for no purpose other than to perpetuate segregation of the races in that public school system.

The survey teams have also sought to perpetuate the dual public school system by refusing to recommend consolidation where consolidation would have had the effect of desegregating. These reports reflect that the survey teams consistently compromised the minimum student standards in order to maintain segregation of the students. Such a course of conduct is condemning evidence that the defendants have sought to perpetuate and, through this means, have effectively perpetuated the dual public school system.

In yet another area, the state survey recommendations pertaining to the location of new schools have been designed to perpetuate the dual system. Considerations of economy, convenience and education have been subordinated to the policy of ra[illegible]paration; survey reports of construction sites reflect this policy. A striking instance of this discriminatory conduct is found in the Clarke

County survey conducted during the 1964-65 school year. At the time of the survey, there were twenty-three schools

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in the system attended by approximately 5800 students—2400 white and 3400 Negro. Consolidation was clearly called for; yet the survey staff sought to perpetuate the segregated system by recommending and approving that, in each of the three principal towns of the county, two separate schools be maintained as permanent school installations, each covering grades 1-12. This recommendation in each of these three towns in Clarke County, Alabama, can be explained only in racial terms. Other similar numerous examples have been presented, the discussion of which would serve no useful purpose.

Furthermore, through the control of finances in school construction, these defendants have insured that Negro children are provided with markedly inferior educational opportunities. For example, the average pupil-teacher ratio in the Negro schools is higher than in the white schools; the per-pupil valuation of school buildings and contents is $607.12 per white pupil as compared to $295.40 per Negro pupil. Over 25% of the Negro high schools in Alabama are unaccredited as compared with only 3.4% of white high schools.

B. Faculty and Staff

It is no longer open to question that faculty and staff desegregation is an integral part of any public school desegregation plan—not because of teachers' employment rights, but because students are entitled to a nonracial education, and assignment of teachers to students on the basis of race denies students that right. See *Bradley* v.

School Board of Richmond, 382 U.S. 103 (1965); *Rogers* v. *Paul*, 382 U.S. 198 (1965); *Kemp* v. *Beasley*, 352 F. 2d 14 (8th Cir. 1965); *Singleton* v. *Jackson Municipal Separate School District*, 355 F. 2d 865 (5th Cir. 1966); *Wheeler* v. *Durham City Board of Education*, 363 F. 2d 738 (4th Cir. 1966); *Davis* v. *Board of School Commissioners of Mobile County*, 364 F. 2d 896 (5th Cir. 1966).

The constitutional duty to desegregate the faculties in public school systems was made clear by the Supreme Court of the United States in *Rogers* v. *Paul, supra:*

> Two theories would give students not yet in desegregated grades sufficient interest to challenge racial allocation of faculty: (1) that racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils; and (2) that it renders inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades.

This constitutional duty was recognized by the United States Court of Appeals for the Fifth Circuit in *Singleton* v. *Jackson Municipal Separate School District, supra,* when the Court stated:

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> . . . [W]e regard it as essential that the plan provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators, and other personnel.

and again in *Davis* v. *Board of School Commissioners of Mobile County, supra,* when the Court stated:

> . . . [T]he plan must be modified in order that there be an end to the present policy of hiring and assigning teachers according to race by the time the last of the

schools are fully desegregated for the school year 1967-68.

The recent decision in *Clark* v. *Board of Education of the Little Rock School District*, 369 F. 2d 661, 669 (8th Cir., December 15, 1966), requires that specific steps must be taken now to end faculty segregation. The Court stated:

> We agree that faculty segregation encourages pupil segregation and is detrimental to achieving a constitutionally required non-racially operated school system. It is clear that the Board may not continue to operate a segregated teaching staff. . . . At this point the Board is going to have to end discriminatory practices in staff assignment and recruitment.

and, in another passage:

> [T]he Board should make all additional positive commitments necessary to bring about some measure of racial balance in the staff of the individual schools in the very near future. The age old distinction of "white schools" and "Negro schools" must be erased. The continuation of such distinctions only perpetuates inequality of educational opportunity and places in jeopardy the effective future operation of the entire "freedom of choice" type plan.

As in other areas, some of which have already been discussed, defendants have endeavored to thwart and, with considerable success, have thwarted efforts toward implementation of the constitutional requirement to eliminate faculty and staff segregation in the public school system of Alabama. The Governor's legal adviser was indeed correct when he declared that, "It [is] . . . the public policy

of the State that Negro teachers not teach white children." Evidence in this case reflects that this policy has been successful for, of over 28,000 teachers in the state, only 76 are teaching in schools to which students of the opposite race have been traditionally assigned. Defendants, through the use of pressures, some of which have herein been outlined, have required local boards to conform to their views on faculty and staff segregation in the school system. As a matter of fact, they have acted affirmatively to use the Minimum Program Fund to make segregation of the faculties and staffs in the several school districts attractive.

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For instance, as we have previously noted, the State Superintendent of Education, at the insistence of the Governor, utilized the state's power, that had been vested in these defendants, of allocation of teacher units by authorizing two additional units to be used for the purpose of hiring white replacements for the two Negro teachers hired by the Tuscaloosa County Board of Education teach in white schools.

Teacher institutes continue to be conducted separately for each race. Section 339, Title 52, Code of Alabama. Generally, the control exercised by these defendants over in-service training programs and teacher certification has been used not as a means to eliminate discrimination in the dual school system of Alabama but as an instrument to enforce segregation throughout that system.

In this area, as in other areas herein discussed, there is an affirmative duty on the part of these defendants, as well as on the part of other school officials throughout the state, to desegregate staffs and faculties. This is also a constitutional duty apart from any federal regulatory scheme.

C. TRANSPORTATION

It cannot seriously be contended that transportation is not a critical factor in the process of disestablishing the traditional dual public school system.[18]

The defendant state officials exercise considerable authority in this area since nearly 100% of the cost of local school transportation programs is paid from the state Minimum Program Fund and, further, since § 209, Title 52, Code of Alabama, empowers the State Board of Education to approve transportation routes submitted by the local boards and to establish minimum standards for the buses that are used to transport the students. This Court's finding in its July 1964 order that these defendants have used this control over transportation to perpetuate segregation is as true now as it was then. The State Board continues to finance and permit the operation of school bus systems organized on a racially discriminatory basis. The buses provided Negro children have been and continue to be of a markedly inferior quality. There is duplication and over-

lapping of bus routes in the school bus transportation

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[18] See, e.g., *Franklin* v. *Barbour County Board of Education*, 259 F. Supp. 545 (MD Ala. 1966); *Harris* v. *Crenshaw County Board of Education*, 259 F. Supp. 167 (MD Ala. 1966); *Carr* v. *Montgomery County Board of Education*, 253 F. Supp. 306 (MD Ala. 1966); *Harris* v. *Bullock County Board of Education*, 253 F. Supp. 276 (MD Ala. 1966); *United States* v. *Lowndes County Board of Education*, Civ. Action No. 2328-N, MD Ala., February 10, 1966; *Wright* v. *County School Board of Greenville County*, 252 F. Supp. 378 (ED Va. 1966); *United States* v. *North Pike Consolidated School District*, Civ. Action No. 3807, SD Miss. Sept. 25, 1965; *Baird* v. *Benton County Board of Education*, Civ. Action No. W.C. 6513, ND Miss. Aug. 3, 1965; *United States* v. *Natchez Special Municipal Separate School District*, Civ. Action No. 1120(W), SD Miss., January 28, 1966 as amended April 15, 1966; *Killingsworth* v. *Quitman Consolidated School District*, Civ. Action No. 1302(E), SD Miss., August 14, 1965.

provided in practically every area of the state to permit white children to avoid attending desegregated schools closer to their homes; further, this system has been and is being used to transport Negro children living near white schools to Negro schools miles away.

D. Trade Schools, Vocational Schools and State Colleges

The state's trade schools, vocational schools and state colleges[19] continue to be operated on a segregated basis. The operation of these systems is the immediate responsibility of the State Board of Education. See the Regional Vocational and Trade School Act of 1947, Code of Alabama, Title 52, § 451(4); the Alabama Trade School and Junior College Authority Act of 1963, Code of Alabama, Title 52, § 509(96); Code of Alabama, Title 52, §§ 451(3) and 509(85). See also Code of Alabama, Title 52, §§ 438 and 452.

There is no necessity for setting out the facts in detail concerning the operation of these state colleges since the evidence conclusively establishes—the defendants do not controvert it—that these schools have been and continue to be operated as if *Brown* v. *Board of Education* were inapplicable in these areas. For example, § 438, Title 52, Code of Alabama, reads:

> The state board of education shall have the control and management of the several teachers' colleges of the state, for white teachers, located at Florence, Jackson-

[19] The term "state college," as used herein, includes all state colleges or universities except the University of Alabama, Auburn University, University of South Alabama at Mobile, and Alabama College at Montevallo, which institutions have separate boards of trustees and are not administered by the Alabama State Board of Education.

ville, Livingston, Troy, and of the Alabama State College for Negroes located at Montgomery.

The plaintiffs are also clearly entitled to relief in this area.

It is quite clear that the defendants have abrogated, and openly continue to abrogate, their affirmative duty to effectuate the principles of *Brown* v. *Board of Education, supra.* Although the facts as herein outlined speak eloquently for themselves, there is no more clear an indication of this than Superintendent Meadows' statement that he has done nothing to eliminate segregation in the public schools of Alabama. As Judges Sobeloff and Bell stated in a concurring opinion in *Bradley* v. *School Board of the City of Richmond, Virginia,* 345 F. 2d 310, 322, 323 (4th Cir. 1965):

> *[T]he initiative in achieving desegregation of the public schools must come from the school authorities.*
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> *Affirmative action means more than telling those who have long been deprived of freedom of educational*
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> *opportunity, "You now have a choice."* [Emphasis added.]
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> It is now 1965 and high time for the court to insist that good faith compliance requires administrators of schools to proceed actively with *their* nontransferable duty to undo the segregation which both by action and inaction has been persistently perpetuated.

Accord, Cooper v. *Aaron, supra.* Such a course of conduct on the part of these defendants has served to thwart and, in many instances, defeat voluntary desegregation plans that have been attempted by the local school districts.

It should be noted that one of the most illegal methods adopted by these defendants to impede desegregation on a local level is that they have consistently attempted to obscure the fact that local school authorities have a federal constitutional duty to desegregate their school systems totally, notwithstanding whether a particular system is under a court order or whether that school system agrees to comply with the requirements of the Department of Health, Education and Welfare of the United States.

Statements to the effect that "the local school districts should go no further than ordered by the Court," and the offers to replace federal funds with state funds have been designed to lead the local school authorities to believe that they have no such affirmative duty. Such philosophy completely ignores the fact that the paramount duty to desegregate is a constitutional one independent of any court order and independent of any federal regulatory program. It is entirely disingenuous of the defendants to fail to admit that their activities were coercive and for them to contend they were, at most, acting in an advisory capacity, with the ultimate control residing with the local boards. The record presented to this Court clearly indicates that these defendants stand ready to exercise, and have in many instances in areas of public education in Alabama exercised, the same powers and control that they demonstrated two and one-half years ago over the Macon County schools when the desegregated school was closed and white students were bused to other schools in the same system that continued to operate on a segregated basis. In addition, this Court's conclusion in its July 1964 order that "The control by the State Board of Education over the local school systems is effected and rigidly maintained through control of * * * finances" has not been diminished by sub-

sequent events. On the contrary, the evidence concerning the conduct of these defendants since 1964 strengthens that conclusion. This control on the part of these defendants over the local boards is all pervasive; it invests in these defendants power over school construction and consolida-

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tion, teachers, school transportation and other vital areas in the operation of the public schools throughout the state.

IV. The Tuition Grant Statute

As observed earlier in this opinion, state and local authorities are under an affirmative constitutional duty to provide equal educational opportunities for all children by ceasing to discriminate on the basis of race and to the extent herein noted and ordered, eliminating the effects of past discrimination. To obviate the performance of this duty, a state may neither operate and maintain two school systems—one integrated, one segregated—giving public school students a choice between the two,[20] nor simply go out of the business of running schools in some school districts and allow that function to be undertaken by private persons.[21] It is also axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.[22]

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[20] *Boson* v. *Rippy*, 285 F. 2d 43, 45-46 (5th Cir. 1960); *Kelly* v. *Board of Education of City of Nashville*, 159 F. Supp. 272, 278 (MD Tenn. 1958).

[21] *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Lee, et al.* v. *Macon County Board of Education*, 231 F. Supp. 743 (MD Ala. 1964).

[22] See *Anderson* v. *Martin*, 375 U.S. 399 (1964). And see, *Lombard* v. *Louisiana*, 373 U.S. 267 (1963); *NAACP* v. *Alabama*, 357 U.S. 449, 463 (1958); *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 726-27 (1961) (Justice Stewart concurring); *Evans*

Measured against these criteria and when viewed in the context of the facts and circumstances which gave rise to its enactment, the vice of the present tuition statute[23] becomes clear: it is but another attempt of the State of Alabama to circumvent the principles of *Brown* by helping to promote and finance a private school system for white students not wishing to attend public schools also attended

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by Negroes.

Alabama's present tuition statute must be analyzed in the historical context which gave rise to its enactment. It is unmistakably clear that the concept of tuition grants to students wishing to attend private schools in Alabama was born of an effort to resist and frustrate implementation

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v. *Newton*, 382 U.S. 296, 305-307 (1965) (Justice White concurring); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 658 (ED La. 1961), aff'd per curiam, 368 U.S. 515 (1962).

[23] "Any other provisions of law notwithstanding, no child shall be compelled to attend any school when in the judgment of the parent or guardian of such child attendance in the school to which assigned will be detrimental to the physical or emotional health of such child or subject the child to hazards to personal safety. In any such case, the parent or guardian of such child shall file written objections with the local board of education and request transfer and reassignment. Upon refusal of any board to grant such a request, the child shall proceed as provided in section 61(7) of this title, or in lieu thereof, submit an application to the state board of education for a tuition grant to attend any private nonsectarian school in or outside the school attendance district in which the child resides. Tuition grants approved by the state board shall not exceed a total of one hundred eighty-five dollars ($185.00) in any one school year, or a sum to be determined by the state superintendent of education to be the cost per pupil in average daily attendance in the public schools of the state, whichever sum shall be less. The state board of education shall promulgate rules and regulations for the administration of tuition grants which shall be paid only from funds appropriated by the legislature for such purpose. It shall be unlawful for any person to use funds granted under this chapter for any purpose other than for the payment of tuition in school; * * *." Title 52, § 61(8), Code of Alabama.

of the *Brown* decision. *Lee* v. *Macon County Board of Education*, 231 F. Supp. 743 (MD Ala. 1964).[24] The first such statute, enacted in 1957, authorized tuition grants for students attending private nondenominational schools in school districts where no public school was available. Chapter 4B of Title 52, Code of Alabama, of which the 1957 tuition grant statute was a section, authorized each local board of education to discontinue operating its public school when it found that the continued operation of its public school "will be accompanied by such tensions, friction, or potential disorder or ill will within the school as substantially to impair effective standards or objectives of education of its pupils, or by potential impairment of peace, order and goodwill in the community, school district, or county involved." Acts of Alabama 1957, No. 528, § 1 at 723. It was pursuant to this chapter that the State Board of Education ordered all grades above the seventh grade in the Macon County public schools closed and directed that payment of tuition grants be made to students residing in Macon County where no public schools were available, who attended racially segregated private schools. In our July 13, 1964 order, we found that implementation of the tui-

[24] It is appropriate to reiterate our conclusions on this point made in our July 13, 1964 order: "Alabama's grant-in-aid system appears to have been first proposed by the Special Interim Committee of the Alabama Legislature in 1954. The legislative history of the statute subsequently enacted by the Alabama Legislature reflects that this Committee was formed to consider means of meeting the decision of the Supreme Court in Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). The Committee's report to the Legislature set forth a number of proposals for delaying or avoiding racial desegregation in education, and it proposed a number of specific amendments to the Alabama Constitution, all of which were ultimately adopted. These grant-in-aid laws are all set out in Title 52, Code of Alabama, recompiled 1958." 231 F. Supp. at 743, n. 4.

tion grant statute was unconstitutional and enjoined its further use.

It is clear that the present tuition statute was born of the same effort to discriminate against Negroes, and was designed to fill the vacuum left by this Court's injunction against the 1957 tuition statute. Although the statute is cast in terms of making eligibility for a tuition grant turn on the parent's judgment that the child's attendance at public school will be detrimental to the child's "physical and emotional health," when read in perspective it turns eligibility for tuition on the parent's dissatisfaction with

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sending his child to a desegregated public school. Prior to 1965-66, § 61(8) said as much on its face. It authorized the parent or guardian of any child attending "any school in which the races are commingled" to terminate the child's attendance there. The amendment simply substituted for the objective test—commingling of races—the subjective test that now appears in the statute—"judgment" of the parant or guardian. Significantly, every dollar paid during the 1965-66 school year went to students enrolled in all-white private schools established when the public schools desegregated.

Finally, it is also important to emphasize that the state has failed to advance any rational basis on which to explain the statute. Eligibility for a tuition grant does not turn on the inadequacy of public educational facilities to accommodate all school-age children in the school district. The statute does not manifest state concern for equalizing the opportunity of all children, including the poor, to attend private schools, for the statute does not require a showing of financial need. Nor does the statute exhibit state concern for improving the educational opportunities of special

classes of students—those who may be gifted or those who may be handicapped. Although the statute applies only to public school pupils, it may not be invoked by pupils in public schools who wish to attend private schools for reasons such as superior instruction, smaller classes, and so forth. The statute narrows its focus on an extremely limited class of students—those students whose physical or emotional health would be adversely affected or whose safety might be jeopardized by attending public schools. Since neither of these conditions can be demonstrated to have any rational basis in fact, there can be only one way to explain the statute: it is designed to aid and assist private discrimination of the kind which would be condemned if attempted directly by the state. As such, the statute is unconstitutional.

It is appropriate to observe in concluding this aspect of the case that it is now becoming apparent that the State of Alabama is attempting to make a concerted effort to establish and support a separate and private school system for white students. Twice in less than three years this Court has had to strike down tuition grant provisions designed to achieve this end. Moreover, the Governor has officially encouraged private contributions to support the many private schools throughout the state *as alternatives to the public desegregated school system.*[25] Up to this point,

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[25] "[*Y*]*our . . . donations . . . will help people in our State who are being forced to conduct private schools because of the destruction of their public schools.*

"This group, made up of representatives of the various private schools, will see that your contribution is distributed to these schools on an equitable basis. These people—these parents—are fighting for their freedom too—a freedom that affects all of us and I hope that you will join me in helping those whose schools have been taken away from them." (Emphasis added.)

this Court has used its injunctive powers to prevent the State of Alabama from establishing a separate school system for white children. It must be made perfectly clear, however, that if the state persists in its efforts dedicated to this end, and its involvement with the private school system continues to be "significant," [26] then this "private" system will have become a state actor within the meaning of the Fourteenth Amendment and will need to be brought under this Court's state-wide desegregation order.

V. The Relief

A. General Nature

As has been outlined in some detail, the defendant state officials have engaged in a wide range of activities to maintain segregated public education throughout the State of Alabama. These activities have been concerned with and have controlled virtually every aspect of public education in the state, including site selection, construction, consolidation, assignment of teachers, allocation of funds, transportation, vocational education, and the assignment of students.

The remedy to which these plaintiffs are constitutionally entitled must be designed to reach the limits of the defendants' activities in these several areas and must be designed to require the defendants to do what they have been unwilling to do on their own—to discharge their constitutional obligation to disestablish in each of the local county and city school systems in Alabama that are not already operating under a United States court order, the

[26] *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 722, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961). See cases in footnote 22, *supra*. And see *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963).

dual public school system to the extent that it is based upon race or color. In this connection, the State of Alabama and particularly the defendant state officials are under an affirmative constitutional duty to take whatever corrective action is necessary to disestablish such a system. Faculty members and staff members, facilities and activities, as well as student bodies, must be desegregated to such an extent that there no longer exists in the Alabama public school system discrimination of any sort or to any degree that is based upon race or color.

This Court can conceive of no other effective way to give the plaintiffs the relief to which they are entitled under the evidence in this case than to enter a uniform

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state-wide plan for school desegregation, made applicable to each local county and city system not already under court order to desegregate, and to require these defendants to implement it. Only in this way can uniform, expeditious and substantial progress be attained, and only in this way can the defendant state officials discharge the constitutional duty that was placed upon them twelve years ago in *Brown* v. *Board of Education, supra.* It cannot seriously be contended that the defendants do not have the authority and control necessary to accomplish this result. Certainly the possibility of losing state funds for failure to abide by and implement the minimum constitutional requirements for school desegregation which this opinion and the accompanying decree require will, without any doubt, effect compliance. Indeed, it is quite clear from the evidence in this case that the local school officials will, through economic necessity if for no other reason, abide by the orders and regulations of these state officials and, in most instances, will be relieved to find themselves no longer under the pressures and exhortations of these defendants

to abrogate their clear constitutional duties in this area. The local officials should, after the entry of this opinion and the accompanying decree, be able to return to the teaching of students and dealing with the related educational problems rather than expending their time and energies trying to tread the difficult "middle ground" between conflicting federal and state demands.

The argument that this Court is proceeding without jurisdiction over indispensable parties to this litigation, to-wit, local school boards throughout the state, is not persuasive. We are dealing here with state officials, and all we require at this time is that those officials affirmatively exercise their control and authority to implement a plan on a state-wide basis designed to insure a reasonable attainment of equal educational opportunities for all children in the state regardless of their race. It may be that in some instances a particular school district will need to be brought directly into the litigation to insure that the defendant state officials have implemented this Court's decree and that the state is not supporting, financially or otherwise, a local system that is being operated on an unconstitutional basis. Hopefully, these instances will be the exception and not the rule. Clearly this possibility does not diminish the propriety of the state-wide relief to be ordered. Having already resolved this issue of state-wide relief against the defendants in the order made and entered in *Lee, et al., United States of America, Amicus Curiae* v. *Macon County Board of Education,* July 13, 1964, 231 F. Supp. 743, further discussion and analysis is not necessary.

B. Other Considerations

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Invariably in this area of our country the "freedom of choice" plan has been chosen by the courts and the school

systems themselves as the method to effectuate the requirements of the Fourteenth Amendment in the field of desegregation of public educational facilities. This is the plan which this Court will require—for the time being—these defendant officials to implement throughout the State of Alabama.[27] This Court recognizes that in the freedom of choice plan there are many administrative complexities. It may be that these administrative problems will make some other method advisable in the future. It may well be that the freedom of choice method of desegregation will not fully and completely disestablish the dual public school system based upon race.[28] However, for the time being, provided that all of the factors designed to influence and having the effect of influencing choice be eliminated, the freedom of choice plan will be put into effect upon a state-wide basis. It should be emphasized that, if choice influencing factors are not eliminated, freedom of choice is a fantasy. A "freedom of choice" plan ordered by a court or adopted by school authorities is not an end in itself; it is but a means to an end. The plan must operate in such a manner as to meet the constitutional mandate of the Fourteenth Amendment. As was stated in the concurring opinion in *Bradley* v. *School Board*, 345 F. 2d 310, 323:

> Affirmative action means more than telling those who have long been deprived of freedom of educational

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[27] The reasons are obvious why school officials have not chosen other plans such as the "neighborhood school" plan, for under such a plan white students would be immediately required to attend Negro schools located in their neighborhoods.

[28] The United States Supreme Court has not yet ruled on the freedom of choice method of ending racial segregation in the field of public education. However, *Goss* v. *Board of Education*, 373 U.S. 683, 83 S.Ct. 1405, 10 L.Ed.2d 632 (1963), has been cited as support for such a plan. See *Bradley* v. *School Board of City of Richmond*, 345 F.2d 310, 318 (4th Cir. 1965).

> opportunity, "You now have a choice." In many instances the choice will not be meaningful unless the administrators are willing to bestow extra effort and expense to bring the deprived pupils up to the level where they can avail themselves of the choice in fact as well as in theory. . . . The district judge must determine whether the means exist for the exercise of a choice that is truly free and not merely pro forma.

In short, the measure of a freedom of choice plan—or, for that matter, any school plan designed to eliminate discrimination based upon race—is whether it is effective. If the plan does not work, then this Court, as well as the State of Alabama school officials—both state and local—is under a constitutional obligation to find some other method to insure that the dual school system of public education based upon race is eliminated. In adopting this plan, there-

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fore, we stress again that it may be only an interim plan. Its success will be periodically judged in the light of the criteria herein set out. For this and all other purposes, jurisdiction will be retained.

The decree and injunction heretofore issued in this case will be enlarged as herein indicated and a formal decree will be entered accordingly.

Done, this the 22nd day of March, 1967.

RICHARD T. RIVES
United States Circuit Judge

H. H. GROOMS
United States District Judge

FRANK M. JOHNSON, JR.
United States District Judge

DECREE

It is ORDERED, ADJUDGED and DECREED that the Alabama State Board of Education, Mrs. Lurleen Burns Wallace, Governor of the State of Alabama and President of the Alabama State Board of Education, James D. Nettles, Ed Dannelly, Mrs. Carl Strang, Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word, and Rev. Harold C. Martin, members of the Alabama State Board of Education, and Ernest Stone, Executive Officer and Secretary of the Alabama State Board of Education, and Alabama State Superintendent of Education, together with their agents, servants, employees, successors in office, and all those in active concert or participation with them who receive actual notice of this decree or any of them, shall be and hereby are permanently enjoined from discriminating on the basis of race in the operation or the conduct of the public schools of Alabama or in any manner pertaining to the public schools of Alabama. As set out more particularly in the body of this decree, said defendants shall take affirmative action to disestablish all state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in their activities and their operation of the public school systems throughout the State.

It is further ORDERED, ADJUDGED and DECREED that:

I

School Construction and Consolidation

A. The State Superintendent of Education shall require all local school systems that have been the subject of a

survey conducted by or under the auspices of the State Department of Education to submit to him, prior to the commencement of the 1967-68 school year, all plans that have been formulated or adopted for the consolidation of any schools in their systems that had at the time of the survey, or now have, fewer students than required under the minimum-student standards of the State Department of Education.

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B. The State Superintendent of Education shall continue to conduct surveys of the local school systems throughout the State, and require that those conducting the surveys shall:

1. Continue to collect and report data regarding the residence of students and the attendance at schools by race;

2. Not fail to recommend consolidation because desegregation would result;

3. Recommend, to the extent consistent with the proper operation of the school system as a whole, that consolidation shall be achieved in a manner to effect desegregation of the schools of the system;

4. Recommend, to the extent consistent with the proper operation of the school system as a whole, that the location, grades and capacity of new schools and expansions of existing school plants be such as to effect desegregation of the schools of the system.

C. Approval by the State Superintendent of Education of all sites upon which schools are to be constructed or existing facilities expanded shall not be based on any sur-

vey conducted prior to the entry of this decree, or any survey that does not accord with the standards set forth above in paragraph B.

D. Approval by the State Superintendent of Education of all sites upon which schools are to be constructed or existing facilities expanded shall be withheld if, judged in light of the capacity of existing facilities, the residence of the students, and the alternative sites available, the construction will not, to the extent consistent with the proper operation of the school system as a whole, further the disestablishment of state enforced or encouraged public school segregation and eliminate the effects of past state enforced or encouraged racial discrimination by the State public school system

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II

Teachers

A. The State Superintendent of Education shall develop a detailed program for assisting and encouraging faculty desegregation in the local school systems throughout the State for implementation prior to the 1967-68 school year and shall submit this program to the Court and all parties within 60 days after the entry of this Court's decree. The program should, at a minimum, establish ways in which the State Department of Education will assist local systems in recruiting, and in planning for the placing of new teachers and reassigning of old teachers on a desegregated basis so that by the fall of 1967, insofar as it is administratively feasible, no school located in a school district where students of both races are in attendance listed in Section IV of this decree will have teachers of only one race. The program should also provide for assistance in

providing training which may be necessary to upgrade the qualifications of some teachers in order to facilitate desegregation of faculty. The program should provide for further progress after 1967-68 to help said local school systems stay in compliance with constitutional requirements in the area of public school desegregation.

B. Any services made available by the State Superintendent of Education to assist local school boards to locate and employ suitable teachers, or to assist teachers to find suitable positions, shall be provided in a manner to effect faculty desegregation in the public schools throughout the State.

C. The State Superintendent of Education shall not give force or effect to that provision of Section 339 of Title 52 of the Alabama Code which requires that separate teacher institutes be held for Negro and white teachers; and he shall direct that a single, system-wide teacher institute be held in each local school system for the 1967-68 school year, and for each school year thereafter, and that such institutes be conducted in a nondiscriminatory manner.

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D. The State Superintendent of Education shall conduct all in-service training programs on a desegregated basis.

E. The State Superintendent of Education shall apply certification requirements without discrimination on the basis of race, and shall not apply certification requirements, or grant provisional certificates, in a manner to perpetuate faculty segregation or to avoid faculty desegregation.

F. The State Superintendent of Education shall inform all applicants for certification that the school systems

throughout the State are obliged to desegregate their faculties, and that teachers are subject to assignment in accordance with that obligation.

III

School Transportation

A. The defendant state officials shall require all local school boards listed in Section IV of this decree, prior to the commencement of the 1967-68 school year, to eliminate race as a basis for assigning students to school buses and to eliminate overlapping and duplicative bus routes based on race.

B. The defendant state officials shall require all of said local school boards, prior to the commencement of the 1967-68 school year, to establish nondiscriminatory criteria governing the availability of bus transportation to students within the school district. These criteria, at a minimum, should entitle each student to be transported to the school he attends if that school is the one nearest his residence and if that school is at least two miles from his residence.

C. The State Superintendent of Education shall require all local school boards listed in Section IV of this decree to submit to him for approval within 60 days after the entry of this decree their proposed bus routes and criteria

governing the eligibility for bus transportation. The State Superintendent shall approve or disapprove the proposed routes and criteria, within 30 days of receiving them, according to the standards set forth in the preceding paragraphs A and B of this section, and, to the extent that he disapproves them, he shall notify the local systems of their deficiencies.

D. The State Superintendent of Education shall require all of said local school boards to communicate those routes and criteria he has approved to students and parents of the school districts in a readily understandable manner and substantially before the opening of the 1967-68 school year. The local school authorities shall notify parents and children, prior to the choice period, that the bus routes and criteria governing the eligibility for bus transportation are being revised and will be established on a nondiscriminatory basis.

E. Whatever technical assistance is made available by the State Superintendent for assisting said local school boards in meeting school transportation problems shall be provided in a manner to assist the local school boards to eliminate overlapping and duplicative bus routes based on race and to formulate nondiscriminatory criteria regarding eligibility of students for transportation.

IV

Desegregation Plans for Local School Systems

The State Superintendent of Education shall notify the following school systems that they are required to adopt a desegregation plan for all grades commencing with the 1967-68 school year that meets the standards embodied in the plan attached to this decree and designated as Exhibit "A":

Alexander City
Andalusia
Anniston
Athens
Attalla
Auburn
Autauga County
Baldwin County
Bibb County
Blount County

Brewton
Butler County
Calhoun County
Carbon Hill
Chambers County
Cherokee County
Chilton County
Clarke County
Clay County
Cleburne County
Coffee County
Colbert County
Conecuh County
Coosa County
Covington County
Cullman
Cullman County
Dale County
Daleville
Dallas County
Decatur
DeKalb County
Demopolis
Dothan
Elba
Elmore County
Enterprise
Escambia County
Etowah County
Eufaula
Fayette County
Florala
Florence
Fort Payne
Franklin County
Geneva County
Greene County
Henry County
Houston County
Jackson County
Jacksonville
Jasper
Lamar County
Lanett
Lauderdale County
Lee County
Limestone County
Linden
Marengo County
Marion
Marion County
Marshall County
Monroe County
Morgan County
Mountain Brook
Muscle Shoals
Oneonta
Opelika
Opp
Ozark
Phenix City
Pickens County
Piedmont
Pike County

Randolph County
Roanoke
Russell County
Russellville
St. Clair County
Scottsboro
Selma
Sheffield
Shelby County
Sumter County
Sylacauga
Talladega
Talladega County
Tallapoosa County
Tallassee
Tarrant
Thomasville
Troy
Tuscaloosa
Tuscaloosa County
Tuscumbia
Walker County
Washington County
Winfield
Winston County

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The State Superintendent of Education shall inform these local school systems that the desegregation plan is to be adopted within 20 days from the entry of this decree; and within 25 days from the entry of this decree the State Superintendent shall submit a report to this Court and to all parties informing them of the action taken by him to discharge this obligation and the results of that action.

V

Institutions Under State Board of Education Control

No person shall be denied admission to any trade school, junior college, or state college[1] administered by the Ala-

[1] The term "state college," as used herein, includes all state colleges or universities except the University of Alabama, Auburn University, University of South Alabama at Mobile, and Alabama College at Montevallo, which institutions have separate boards of trustees and are not administered by the Alabama State Board of Education.

bama State Board of Education upon the ground of race, nor shall he be subjected to racial discrimination in connection with his application for enrollment in or his attendance at any such trade school, junior college, or state college. Dual attendance zones based on race for such trade schools, junior colleges, and state colleges shall be abolished. The State Department of Education shall direct such trade schools, junior colleges, and state colleges to recruit, hire, and assign teachers so as to desegregate faculty and to accomplish some faculty desegregation in each such trade school, junior college, and state college by September 1967.

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VI

Equalization of Facilities

The State Superintendent of Education shall develop, and submit to this Court and all the parties within 120 days after the entry of this decree, a detailed program for bringing the quality of the physical facilities, equipment, services, courses of instruction, and instructional materials of schools previously maintained for Negro students up to the level in schools previously maintained for white students. This program shall eliminate those disparities reflected in different pupil-teacher ratios, survey classifications of buildings and sites, per pupil expenditures, valuation of school property, library books per pupil, course offerings, accreditation, and transportation. In connection with applications for teacher units for vocational teachers or teachers of exceptional children, the State Superintendent of Education shall consider and grant those applications that satisfy educational requirements and had been submitted before the entry of this decree on behalf of

schools traditionally maintained for Negro students, prior to acting upon other applications for such units.

VII

Information and Reports

A. The State Superintendent of Education shall make, at reasonable times and places, and upon reasonable notice, the following available to all parties:

1. All consolidation plans submitted to him by local school boards pursuant to the requirements of paragraph A of Section I of this decree.

2. All survey reports hereafter conducted pursuant to paragraph B of Section I of this decree.

3. All applications and records of action by the State Superintendent of Education regarding the approval or disapproval of school construction or expansion, together with all information relating to the

sites, including the pertinent survey reports.

4. All documents relating to teacher institutes and to in-service training programs, including a report giving the number of teachers that attended each institute, the schools the teachers were from, and the race of the teachers.

5. All proposals of the local school boards relating to the routing of school buses and the criteria governing eligibility for bus transportation that are submitted to the State Superintendent for his approval under paragraph C of Section III of this decree, together with a report indicating which proposals have

been approved and when and how students and parents in the various school systems throughout the State were informed of these routes and criteria.

6. All records pertaining to action taken by the State Superintendent of Education with respect to applications for teacher units for teachers of exceptional children and vocational education teachers.

7. Records indicating the State Superintendent's action with respect to provisional teaching certificates, and a report indicating how applicants for certification were informed of the obligation of the local systems regarding faculty desegregation.

8. Records showing the attendance zones, bus routes, racial composition of faculty, and racial composition of student body for each trade school, junior college, and state college.

B. The State Superintendent of Education shall submit to the Clerk of this Court and serve upon all parties:

1. Within 60 days after the entry of this decree the detailed program regarding faculty desegregation required by paragraph A of Section II of this decree.

2. Within 120 days after the entry of this decree

the detailed program regarding school equalization required by Section VI of this decree.

3. Within 25 days after entry of this decree, a report on the action taken by the State Superintendent of Education respecting the 99 school districts listed in Section IV of this decree, and the results of that action.

4. A report, which must be submitted by October 5 each year, setting forth the following information with respect to the local school systems listed in Section IV of this decree:

(a) The number of students by race, in each grade of each school for the current school year;

(b) The number of faculty members of each race assigned to each school for the current school year, together with the number of faculty vacancies or new positions, by school, that have arisen or have been filled by the school board since the last report; and

(c) The number of students that have requested to transfer from the schools they were assigned to, together with a description of the action taken by the local school board on such requests and the reasons therefor.

5. A report, which must be submitted on or before June 15 of each year, setting forth the following information with respect to each school system listed in Section IV of this decree:

The number of choice applications received for each grade, the number of choices granted and denied, and the reasons for all denials.

IX

Interference

The defendant state officials should not interfere with,

prevent or obstruct by any means the elimination of racial discrimination by local school officials in any school system in the State of Alabama.

X

The 1965-1966 Tuition Grant Statute

Title 52, Section 61(8), Code of Alabama (Tuition Grant Statute, No. 687, approved September 1, 1965), is hereby declared unconstitutional. The defendant state officials, their agents, employees, and successors in office shall not approve or permit the approval or the payment of any tuition grants or grants-in-aid under the authority of this law.

It is further ORDERED that the United States submit to this Court within 30 days, and serve upon all parties, a report informing the Court whether any of the school systems listed in Section IV of this decree have failed, following the entry of this Court's decree, to adopt a satisfactory desegregation plan.

It is further ORDERED that the costs of this action be and they are hereby taxed against the defendant state officials.

It is further ORDERED that jurisdiction of this cause be and it is hereby retained.

Done this the 22nd day of March, 1967.

RICHARD T. RIVES
United States Circuit Judge

H. H. GROOMS
United States District Judge

FRANK M. JOHNSON, JR.
United States District Judge

EXHIBIT "A"

Desegregation Plan

The ..... Board of Education will take the following affirmative action to disestablish all state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in the operation of the school system:

I

Exercise of Choice

The following provisions will apply to all grades commencing with the 1967-68 school year:

A. *Who May Exercise Choice.* A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this plan to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

B. *Annual Exercise of Choice.* All students, both white and Negro, will be required to exercise a free choice of schools annually.

C. *Choice Period.* The period for exercising choice will commence May 1, 1967, and end June 1, 1967, and in subsequent years will commence March 1 and end March 31 preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period will be given any preference because of the time within the period when such choice was exercised.

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D. *Mandatory Exercise of Choice.* A failure to exercise a choice within the choice period will not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens will be assigned to the school nearest his home where space is available under standards for determining available space which will be applied uniformly throughout the system.

E. *Public Notice.* On or within a week before the date the choice period opens, the school board will arrange for the conspicuous publication of a notice describing the provisions of this plan in the newspaper most generally circulated in the community. The text of the notice will be substantially similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice will also be given at that time to all radio and television stations serving the community. Copies of this plan will be posted in each school in the school system and at the office of the Superintendent of Education.

F. *Mailing of Explanatory Letters and Choice Forms.* On the first day of the choice period there will be distributed an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the school board) of each student, together with a return envelope addressed to the Superintendent. The text for the explanatory letter and choice form will essentially conform to the sample letter and choice form appended to this plan.

G. *Extra Copies of the Explanatory Letter and Choice Form.* Extra copies of the explanatory letter and choice form will be freely available to parents, students, prospective students, and the general public at each school in the

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system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

H. *Content of Choice Form.* Each choice form will set forth the name and location of and grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, will will be required or requested.

I. *Return of Choice Form.* At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

J. *Choices Not on Official Form.* The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

K. *Choice Forms Binding.* When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices for their children under the conditions set forth in paragraph I-A of this plan and in exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student.

L. *Preference in Assignment.* In assigning students to schools, no preference will be given to any student for prior attendance at a school and except with the approval of the State Superintendent of Education in extraordinary circumstances, no choice will be denied for any reason other than overcrowding. In case of overcrowding at any school, preference will be given on the basis of proximity

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of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding will be applied uniformly throughout the system.

M. *Second Choice Where First Choice Is Denied.* Any student whose choice is denied will be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student will have seven days from the receipt of notice

of a denial of first choice in which to exercise a second choice.

N. *Transportation.* Where transportation is generally provided, buses will be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing the school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is at least two miles from his residence. The school system will adopt nondiscriminatory bus routes and criteria governing the availability of bus transportation to students, so that race will not be a basis for assigning students to school buses and overlapping and duplicative bus routes based on race will be eliminated. Prior to the choice period, parents and children will be advised that such routes and criteria will be adopted, and substantially prior to the opening of the 1967-68 school year the parents and children will be notified of the routes and criteria, in a readily understandable manner.

O. *Officials Not to Influence Choice.* At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any persons because of a choice made. If the school board employs professional guidance counselors,

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such persons will base their guidance and counseling on the individual student's particular personal, academic, and vocational needs. Such guidance and counseling by teachers as well as professional guidance counselors will be available to all students without regard to race or color.

P. *Protection of Persons Exercising Choice.* Within their authority, school officials are responsible for the protection of persons exercising rights under or otherwise affected by this plan. They will, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference will include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board will not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this plan. If officials of the school system are not able to provide sufficient protection, they will seek whatever assistance is necessary from other appropriate officials.

II

Prospective Students

Each prospective new student will be required to exercise a choice of schools before or at the time of enrollment. Each such student known to the school system will be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Where there is no preregistration procedure for newly entering students, copies of the choice forms will be available at the office of the Superintendent and at each school during the time the school is usually open.

III

Services, Facilities, Activities And Programs

No student will be segregated or discriminated against on account of race or color in any service, facility, activity,

or program (including transportation, athletics, or other extra-curricular activity) that can be conducted or spon-

sored by or affiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis will not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, nonracially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, will be open to all persons without regard to race or color. All special educational programs conducted by the school system will be conducted without regard to race or color.

IV

School Equalization

A. *Inferior Schools.* In schools heretofore maintained for Negro students, the school system will take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white persons. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios will, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those

formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school will be closed as soon as possible, and students enrolled in the school will be reassigned on the basis of freedom of choice. By October of each year, the school board will report to the State Superintendent of Education pupil-teacher ratios, pupil-classroom ratios, and per-pupil expenditures both as to operating and capital im-

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provement costs, and will outline the steps to be taken and the time within which they will accomplish the equalization of such schools.

B. *Remedial Programs.* The school system will provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

V

School Construction And Consolidation

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not build, consolidate or expand schools based on recommendations of any state survey conducted prior to March 1967 unless the state reapproves such building, consolidation or expansion. The school board will not fail to consolidate schools because desegregation would result.

VI

Faculty And Staff

A. *Faculty Employment and Assignment.* Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race will be taken into account for the purpose of correcting the effect of the past segregated assignment of teachers in the dual system. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take affirmative steps to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year. The objective of the

school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

B. *Dismissals.* Teachers and other professional staff members will not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or re-

hiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the State Superintendent of Education.

VII

Reports

A. *Report on Choice Period:* The school system will file with the State Superintendent of Education on or before June 10 of each year a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report will also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

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B. *Report After School Opening.* The system will file with the State Superintendent of Education within 15 days after the opening of schools for the fall semester of each year a report setting forth the following information:

(1) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken on his request and the reasons therefor.

(2) The number of faculty vacancies, by school, that have occurred or been filled since the adoption of this plan or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(3) The number of students by race, in each grade of each school.

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EXPLANATORY LETTER

(School System Name and Office Address)

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next school year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all white or all Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by June 1, 1967.* You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the office of the Superintendent at any time between May 1 and June 1. No one may require you to return your choice form before June 1 and no preference is given for returning the choice form early.

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* In subsequent years the dates in both the explanatory letter and the choice form should be changed to conform to the choice period.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

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No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. The school board is rerouting buses and writing new rules for assigning students to buses, so that there will be no more overlapping bus routes and students will be assigned to buses without regard to race. (Delete if the school system does not provide transportation.)

Your school board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely,

Superintendent

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CHOICE FORM

This form is provided for you to choose a school for your child to attend next school year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or a Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent (address), by June 1, 1967. A choice is required for each child.

Name of child .....
(Last) (First) (Middle)

Address .....

Name of parent or other adult serving as parent .....

If child is entering first grade, date of birth:

.....
(Month) (Day) (Year)

Grade child is entering .....

School attended last year .....

Choose one of the following schools by marking an X beside the name.

	Name of school	*Grades Offered*	*Location*
( )	.....	.....	.....

( ) (All schools in the district, the grades offered by
( ) each, and the location of each will be listed on the
( ) form prior to its distribution to parents and stu-
( ) dents.)

( )	.....	.....	.....

Signature .....

Date .....

.....

....

To be filled in by Superintendent:

School assigned .....

Order to Adopt Plan for Desegregation

(Filed June 1, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARLAM CARR, ET AL.,

Plaintiffs,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR., FRED BEAR, GEORGE C. STARKE, GEORGE A. DOZIER, DR. J. EDWARD WALKER, ISABELLE B. THOMASSON and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER McKEE, Superintendent of Education of Montgomery County,

Defendants,

UNITED STATES OF AMERICA,

Amicus Curiae.

DECREE

Upon a hearing pursuant to this Court's order of April 28, 1967, directing the defendant school system to show cause why it should not be required to adopt a desegregation plan which conforms with the standards embodied in *United States and Linda Stout, et al. v. Jefferson County Board of Education, et al.*, Fifth Circuit No. 23345, Dec. 29, 1966 (adopted with modifications by the Court, sitting

en banc, March 29, 1967), and in Exhibit "A" attached to this Court's decree of March 22, 1967, in the case of *Anthony T. Lee, et al.* v. *Macon County Board of Education, et al.* (Civil Action No. 604-E, three-judge court), it is hereby

ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors, and all those in active concert or participation with them, shall adopt and implement the attached plan for the desegregation of the public school system of Montgomery County, Alabama. It is further

ORDERED that this Court specifically retain jurisdiction of this cause.

Done, this the 1st day of June, 1967.

FRANK M. JOHNSON, JR.
United States District Judge

DESEGREGATION PLAN

The Montgomery County Board of Education will take the following affirmative action to disestablish all state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in the operation of the school system:

I

Exercise Of Choice

The following provisions will apply to all grades commencing with the 1967-68 school year:

A. *Who May Exercise Choice.* A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this plan to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

B. *Annual Exercise of Choice.* All students, both white and Negro, will be required to exercise a free choice of schools annually.

C. *Choice Period.* The period for exercising choice will commence March 1 and end March 30 preceding the school

year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period will be given any preference because of the time within the period when such choice was exercised.

D. *Mandatory Exercise of Choice.* A failure to exercise a choice within the choice period does not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choice of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week before school opens will be assigned to the school nearest his home where space is available under standards for determining available space which will be applied uniformly throughout the system.

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E. *Public Notice.* On, or within a week before, the date the choice period opens, the school board will arrange for the conspicuous publication of a notice describing the provisions of this plan in the newspaper most generally circulated in the community. The text of the notice will be substantially similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice will also be given at that time to all radio and television stations serving the community. Copies of this plan will be posted in each school in the school system and at the office of the Superintendent of Education.

F. *Distribution of Explanatory Letters and Choice Forms.* On the first day of the choice period there will be distributed an explanatory letter and a choice form (Ap-

pendices A and B) to the parent (or other adult person acting as parent, if known to the school board) of each student. The distribution of the explanatory letter and choice form may be either by mail or by handing them to the student for delivery to the parent, or other adult person acting as parent. Regardless of the method of distribution, the affirmative duty of securing a choice form from each student is upon the defendants. The text for the explanatory letter and choice form will essentially conform to the sample letter and choice form appended to this plan. Extra copies of the explanatory letter and choice form will be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education.

G. *Return of Choice Form.* At the option of the person completing the choice form, the choice may be returned by mail, in person or by messenger to any school in the school system or to the office of the Superintendent.

H. *Choices Not on Official Form.* The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

I. *Choice Forms Binding.* Once a choice form has been submitted it is binding for the entire school year, and may not be changed except in cases of parents making different choices for their children under the conditions set forth in paragraph I-A of this plan and in cases where, absent the consideration of race, compelling hardship is shown by the student.

J. *Preference in Assignment.* In assigning students to

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schools, no preference will be given to any student for prior attendance at a school and except with the approval of the Court in extraordinary circumstances no choice will be denied for any reason other than overcrowding. In case of overcrowding at any school, preference will be given on the basis of proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding will be applied uniformly throughout the system. All existing attendance areas as defined by district lines and feeder school descriptions will be abolished effective 1967.

K. *Second Choice Where First Choice Is Denied.* Any student whose choice is denied will be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student will have seven calendar days from and after the opening of school in which to exercise a second choice.

L. *Transportation.* Where transportation is generally provided, buses will be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing either the formerly white or the formerly Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules. The school system will adopt nondiscriminatory bus routes and criteria governing the availability of bus

transportation to students, so that race will not be a basis for assigning students to school buses and overlapping and duplicative bus routes based on race will be eliminated. Prior to the choice period, parents and children will be advised that such routes and criteria will be adopted, and substantially prior to the opening of the 1967-68 school year the parents and children will be notified of the routes and criteria, in a readily understandable manner.

M. *Officials Not to Influence Choice.* At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any person because of a choice made. After the expiration of the choice period, the school system will make all reasonable efforts to obtain a completed choice form from each student who has not exercised a choice. If the school board employs professional guidance counselors, such persons will base their guidance and counseling on the individual student's particular, personal, academic,

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and vocational needs. Such guidance counselors will be available to all students without regard to race or color.

N. *Protection of Persons Exercising Choice.* Within their authority, school officials are responsible for the protection of persons exercising rights under or otherwise affected by this plan. They will, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference will include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board will not publish, allow, or cause to be

published, the names or addresses of pupils exercising rights or otherwise affected by this plan. If officials of the school system are not able to provide sufficient protection, they will seek whatever assistance is necessary from other appropriate officials.

II

Prospective Students

Each prospective new student will be required to exercise a choice of schools before or at the time of enrollment. Each such student known to the school system will be furnished, by mail or in person, a copy of the prescribed letter to parents and the choice form on the date the choice period opens, or as soon thereafter as the school system learns that he plans to enroll. Where there is no preregistration procedure for newly entering students, copies of the choice forms will be available at the office of the Superintendent and at each school during the time the school is usually open.

III

Services, Facilities, Activities and Programs

No student will be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extracurricular activity) that may be conducted or sponsored by or affiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis will not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer, or newly assigned, student. All

school use or school sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students will be open to all persons without regard to race or color. All special educational

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programs conducted by the school system will be conducted without regard to race or color.

IV.

School Equalization

Prior to the commencement of the 1967-68 school year, the following schools will be discontinued as educational facilities:

Alice White	Lillian Dungee
Arrington	Waugh
Big Zion	Woodley
Tankersley	Zion Hill
Chappell Gray	McLean
G. W. Trenholm	McLemore
Lillian Dabney	Mt. Zion Road

The Montgomery County Board will design and provide remedial education programs to eliminate the effects of past discrimination, particularly, the results of the unequal and inferior educational opportunities which have been offered in the past to Negro students in the Montgomery County school system.

Students displaced as a result of the closing of the above-listed schools will be assigned to schools, without regard to race or color, on a freedom of choice basis as described in this plan.

Expansion of existing school plants to accommodate displaced students will be designed to eliminate the dual school system. In the remaining schools heretofore maintained for Negro students, the school system will take promptly the steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal that provided in schools previously maintained for white persons. Conditions of overcrowding, as determined by pupil-teacher ratios will, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school will be closed as soon as possible, and students reassigned on the basis of freedom of choice. By October of each year, the school board will report to the Court pupil-teacher ratios, pupil-classroom ratios, and

(Copy illegible)

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V

School Construction and Consolidation

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not build, consolidate or expand schools based on recommendations of any state survey

conducted prior to March, 1967, unless the state reapproves such building, consolidation or expansion. The school board will not fail to consolidate schools because desegregation would result.

VI

Faculty and Staff

A. *Faculty Employment and Assignment.* Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion or dismissal of teachers and other professional staff members, including student teachers, except that race will be taken into account for the purpose of counteracting or correcting the effect of the past segregated assignment of teachers in the dual system. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take positive and affirmative steps to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year, notwithstanding that teacher contracts for the 1967-68 or 1968-69 school year have already been signed and approved. The objective of the school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the sys-

tem will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

B. *Dismissals.* Teachers and other professional staff members will not be discriminatorily transferred, dismissed, demoted, or passed over for retention, probation, or rehiring on the ground of race or color. In any instance,

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where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Court, and copies served upon opposing counsel within five (5) days after such dismissal, demotion, etc., is proposed.

C. *Notice to New Staff Members.* In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially desegregated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

D. *Encouragement of Voluntary Faculty Transfers.* The Superintendent of Schools and his staff will take

affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

VII

Reports to the Court

A. *Report on Choice Period.* The defendants shall serve upon the opposing parties and file with the Court on or before June 7 each year a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report will also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

B. *Report on Faculty Assignments.* The school officials will report to the Court by June 15, and each such date until further order by this Court, the planned assignments of professional staff to each school for the next school year by race and grade or, where appropriate, by subject taught

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or position held and report, as it occurs, any subsequent change in planned staff assignments affecting staff desegregation.

C. *Report After School Opening.* The system will file with the Court within fifteen (15) days after the opening of schools for the fall semester of each year a report setting forth the following information:

(1) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken on his request and reasons therefor.

(2) The number of faculty vacancies, by school, that have occurred or been filled since the adoption of this plan or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(3) The number of students, by race, in each grade of each school.

APPENDIX A

Explanatory Letter

(School System Name and Office Address)

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next school year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all white or all Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

All students, both white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by March 31, 1968.* You may mail it, or deliver it by messenger or by hand to any school principal, or to the office of the Superintendent at any time between March 1 and March 31. No one may require you to return your choice

* In subsequent years the dates in both the explanatory letter and the choice form should be changed to conform to the choice period.

form before March 31 and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. The school board is rerouting buses and writing new rules for assigning students to buses so that there will be no more overlapping bus routes

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and students will be assigned to buses without regard to race.

Your school board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely,

Superintendent

APPENDIX B

Choice Form

This form is provided for you to choose a school for your child to attend next school year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or a Negro school. This form must be mailed or brought to the principal of any school in the system or the office of the Superintendent (address), by March 31, 1968. A choice is required for each child.

Name of child .....
(Last) (First) (Middle)

Address .....

Name of Parent or other
adult serving as parent .....

If child is entering first grade, date of birth:

.....
(Month) (Day) (Year)

Grade child is entering .....

School attended last year .....

Choose one of the following schools by marking an X beside the name.

	Name of School	*Grades Offered*	*Location*
( )	.....	.....	.....

( ) (All schools in the district, the grades offered by
( ) each, and the location of each will be listed on the
( ) form prior to its distribution to parents and
( ) students.)

( )	.....	.....	.....

Signature .....

Date .....

.....

.....

To be filled in by Superintendent:

School assigned .....

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Amicus Curiae Notice of Motion and Motion for Further Relief

(Filed August 17, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TO: THE ATTORNEYS OF RECORD HEREIN

PLEASE TAKE NOTICE THAT ON , 1967, at M., or as soon thereafter as counsel may be heard, in the courtroom of the United States District Court for the Middle District of Alabama, Federal Courthouse Building, Montgomery, Alabama, the United States, Amicus Curiae herein, will move the Court for an order further enjoining the defendants from failing to make additional assignments and reassignments of faculty members in the Montgomery County, Alabama, public school system for the purpose of achieving substantial faculty desegregation by the 1967-68 school year and as grounds therefor, states that:

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1. On June 1, 1967, the Court entered an order after hearing on its order to show cause dated April 28, 1967, which provided, inter alia, for substantial desegregation of the Montgomery County school system for the 1967-68 school year.

2. On June 15, 1967, the defendants submitted a report on the anticipated faculty assignments for the 1967-68

school year by school and race. That report shows that of the 804 white teachers assigned for the 1967-68 school year, 5 are anticipated to be teaching in two Negro high schools, and that of 554 Negro teachers, 5 are anticipated to be teaching in two predominantly white high schools.

3. From June 15, 1967 through August 15, 1967, only three additional faculty assignments have been made which have the effect of desegregating the faculties in the Montgomery County public school system.

4. This motion is based upon the pleadings, evidence and reports on file in this case and upon evidence to be adduced at the hearing on this motion.

JOHN DOAR
Assistant Attorney General

REUBEN ORTENBERG
Attorney
Department of Justice

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Certificate of Service (omitted in printing)

Plaintiffs' Joining in Motion

(Filed August 30, 1967)

U. S. DISTRICT COURT

FOR MIDDLE DISTRICT OF ALABAMA
NORTH DIVISION

Now comes the Plaintiffs in the above entitled cause and join with the United States in praying for the relief set forth in its motion filed on August 17, 1967.

Respectfully submitted,

GRAY & SEAY

Certificate of Service (omitted in printing)

Answer to Motion

(Filed September 1, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes the Montgomery County Board of Education, et al., defendants in the above entitled cause, and in response to the motion for further relief heretofore filed by the Amicus Curiae, United States of America, respectfully represents and shows unto the Court as follows:

1. The defendants, pursuant to the order of the Court dated June 1, 1967, did, on June 15, 1967, file a report with the Court showing that for the 1967-68 school year the Montgomery County Board of Education has employed three white teachers to predominantly Negro Booker Washington High School; two white teachers to the predominantly Negro Carver High School; three Negro teachers to the predominantly white Lanier High School; and two Negro teachers to the predominantly white Lee High School. A copy of this said report is attached hereto and made a part hereof as "Exhibit A" as if set forth fully herein.

A copy of this said report was served on the United States of America and on the attorneys for the plaintiff by mailing a copy of same to them on June 15, 1967, postage prepaid.

2. These defendants further state to the Court that they have diligently endeavored to accomplish faculty and staff desegregation of the Montgomery County School System.

These defendants aver that in view of all circumstances

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and since the 1967-68 school year is the first year for faculty and staff desegregation in the County, the report as filed does show a substantial and good faith compliance with this Court's order.

3. These defendants further show that in further efforts to comply in good faith with the orders of this Court, the defendants have taken additional positive and affirmative steps to accomplish desegregation of faculty by employing three white speech teachers to work in all elementary schools regardless of race or color. That all substitute teachers are listed alphabetically regardless of race or color and these lists will be furnished to all principals of all schools. The average number of substitute teachers employed in the system on a school day is 31.

4. These defendants aver that they have accomplished all of the desegregation of faculty as is possible for the 1967-68 school year; that faculty reassignment or re-employment at this time would be impossible, consistent with the best interests of the education of all of the children of this County, regardless of race.

5. These defendants aver that neither the United States of America, Amicus Curiae, nor the plaintiffs, made any objection to the report heretofore filed on June 15, 1967, until the date of August 17, 1967, approximately two weeks prior to the opening of school and two months after said report was filed. Defendants further aver that students will commence attendance for the 1967-68 school term on September 7, 1967, and faculty meetings in the school system with room assignments and equipment assignments have already been made.

6. The defendants further aver that the placement of faculty and the employment of teachers is of the utmost importance to the school system and that in accomplishment of this the most diligent care must be exercised. These

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defendants aver and state to the Court that they have employed teachers and made assignments, as referred to hereinabove, in a bona fide effort to comply with the Court order and to maintain a quality school system in the best interests of all school children of this County, regardless of race or color.

WHEREFORE, PREMISES CONSIDERED, these defendants pray that the Court will dismiss the motion for further relief or, in the alternative, will deny the relief therein prayed for.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for the Defendant

Certificate of Service (omitted in printing)

EXHIBIT "A"

Montgomery Public Schools

Teaching Staff Assignments as of June 15, 1967

School	Negro	White	Total	Grades
Baldwin Jr. High		31	31	7-9
Bear		19	19	1-6
Bellinger Hill		8	8	1-6
Bellinger Jr. High		45	45	1-9
Billingslea	7		7	1-6
Booker Washington Elem.	17		17	1-6
Booker Washington Jr. High	30		30	7-9
Booker Washington Sr. High	32	3 (*1)	35	10-12
Capitol Heights Elem.		17	17	1-6
Capitol Heights Jr. High		35	35	7-9
Carver Elementary	24		24	1-6
Carver Jr. High	24		24	7-9
Carver Sr. High	53	2 (*2)	55	10-12
Catoma		9	9	1-6
Chilton		8	8	1-6
Chisholm		25	25	1-6
Cloverdale Jr. High		36	36	1-9
Daisy Lawrence	28		28	1-6
Dalraida		19	19	1-6

School	Negro	White	Total	Grades
Dannelly		23	23	1-6
Davis		22	22	1-6
Dunbar High	45		45	1-12
Fews	26		26	1-6
Flowers		25	25	1-6
Floyd Jr. High		44	44	1-9
Forest Avenue		11	11	1-6
George Washington High	46		46	1-12
Goode Street		8	8	1-6
Godwyn Jr. High		42	42	7-9
Hale	20		20	1-6
Harrison		23	23	1-6
Hayneville Road Jr. High	44		44	1-9
Head		17	17	1-6
Highland Avenue		13	13	1-6
Highland Gardens		23	23	1-6
Houston Hill	15		15	7-9
Johnson		24	24	1-6
Lanier	3 (*3)	102	105	10-12
Lee	2 (*4)	82	84	10-12
Loveless	44		44	1-9
McDavid	22		22	1-6
McIntyre Elem.	30		30	1-6
McIntyre Jr. High	7		7	7-9
MacMillan		13	13	1-6
Madison Park	10		10	1-6
Montgomery Co. High		19	19	1-12

School	Negro	White	Total	Grades
Morningview		17	17	1-6
Paterson	25		25	1-6
Pendar Street		21	21	1-6
Pike Road		7	7	1-9
Pine Level		3	3	1-6
Pintlala		8	8	1-9

*1 One teacher English, Grades 10, 11 and 12.
One teacher English, and Social Studies, Grades 10, 11 and 12.
One teacher Commercial Subjects, Grades 10, 11 and 12.

*2 One teacher Military Science, Grades 10, 11 and 12.
One teacher Social Studies, Grades 10, 11 and 12.

*3 One teacher Military Science, Grades 10, 11 and 12.
One teacher Commercial Subjects, Grades 10, 11 and 12.
One teacher Heath & Physical Education, Grades 10, 11 and 12.

*4 One teacher Commercial Subjects, Grades 10, 11 and 12.

2 ILLEGIBLE LINES—PLEASE SUPPLY

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Notice of Taking Discovery Deposition

(Filed January 30, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To:

Fred D. Gray, Esq.
34 N. Perry Street
Montgomery, Alabama

Vaughn Hill Robison, Esq.
Hill, Robison, Belser & Phelps
P. O. Box 901
Montgomery, Alabama

PLEASE TAKE NOTICE that the United States, amicus curiae herein, will take the deposition, for the purpose of discovery, of Walter T. McKee, Superintendent of Education for Montgomery County, at 1:30 P.M. January 31, 1968 at the office of the Montgomery County Board of Education, 305 South Lawrence Street, Montgomery, Alabama. The deposition will continue from day to day until completed.

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You are invited to attend and cross-examine.

FRANK D. ALLEN, JR.
Attorney
U. S. Dept. of Justice

Certificate of Service (omitted in printing)

Further Answer to Motion

(Filed February 1, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes the Montgomery County Board of Education, et al., the defendants in the above entitled cause and in further response to the motion for further relief heretofore filed on August 17, 1967, by the Amicus Curiae, the United States of America, respectfully represent and show unto the Court as follows:

1. That since the filing on September 1, 1967, of the defendants' answer to the said motion for further relief the defendants have employed seven replacement teachers which have been assigned to faculties in schools of this system which are attended by students predominantly of the opposite race. There is presently a total of thirty-two faculty employees teaching in schools predominantly of the opposite race.

2. That substitute teachers of an undetermined number have been employed during the 1967-68 term to teach in schools where students of the opposite race are predominant.

3. That Negro student teachers are practice teaching in the 1967-68 term in schools which are attended predominantly by white students.

4. These defendants aver that they have accomplished all of the desegregation of faculty that is possible for the 1967-68 school term; that insofar as possible they will continue in their efforts to further desegregate the faculty;

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that faculty reassignment or re-employment at this time would be impossible consistent with the best interest of the education of all of the children of this County regardless of race; that there are no promotions in any of the elementary or junior high schools in this system during the term; that there are no promotions from elementary to junior high school during a nine month term; that no new or additional grades are begun in elementary or junior high schools during a nine month term.

5. These defendants further state to the Court that they are diligently endeavoring to accomplish further faculty and staff desegregation in the Montgomery County School System for the 1968-69 school year; that in the 1968-69 school year there will be further faculty and staff desegregation in this County and that they are in good faith compliance with this Court's Order.

6. These defendants further aver that the placement of faculty and the employment of teachers is of the utmost importance to the school system and that in the accomplishment of this, the most diligent care must be exercised. These defendants aver that they have employed teachers and have made assignments in a bona fide effort to comply with this Court's Order to discharge the affirmative duty placed on them by law to desegregate the faculty of this school system and to maintain a quality school system in

the best interest of all children in this County, regardless of race or color.

WHEREFORE, these defendants pray that this Court will dismiss the motion for further relief or, in the alternative will deny the relief therein prayed for.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendants

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Certificate of Service (omitted in printing)

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Amicus Curiae Notice of Motion and Motion for Further Relief

(Filed February 7, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: *The Parties and the Attorney of Record for Each Party*

PLEASE TAKE NOTICE that at a time and place to be set by the Court, the United States, Amicus Curiae, will move the Court for an Order enjoining the defendants from:

1., Failing to fill each vacancy hereafter occurring in the Montgomery County School System with a teacher or staff member whose race is in the minority at the school to which he is assigned unless the racial composition of the faculty and staff at that school no longer contributes toward identifying the school as being intended for a predominance of one race and unless no qualified teacher of the minority race is available.

2. Failing to establish a comprehensive program to provide for desegregation of student teachers and substitute teachers.

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3. Failing to assign faculty and staff to the Jefferson Davis High School and to the two new elementary schools so that the faculties and staffs are substantially deseg-

regated and the schools will not be identifiable as intended for a preponderance of one race.

4. Failing to take affirmative action to correct the impression they have created that the proposed Jefferson Davis High School is intended predominantly for white students and failing to schedule athletic contests in such a way as to disestablish the dual school system.

5. Failing to report to this Court every three months, the first report to be due April 1, 1968, the steps taken to comply with the Order of this Court herein sought.

As grounds for the motion, the United States submits:

1. On September 5, 1967, a hearing was had in this Court on the United States' Motion for Further Relief. No ruling pursuant to that hearing has yet been made.

2. Since September 1, 1967, defendants have had 22 vacancies occur in the faculties of the Montgomery County School System, and 31 new teachers have been hired.

3. Of the 31 new teachers hired since September 1, 1967 school year, seven have been placed in schools where their race is in the minority.

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4. During the first grading period, defendants had approximately 150 student teachers working in the Montgomery County System, none of whom were assigned to a position where their race was in the minority.

5. For the second grading period, defendants will have approximately the same number of student teachers assigned to the various schools in the system. Four Negro

student teachers have been assigned to predominantly white schools.

6. The defendants have not taken adequate steps to insure that substitute teachers are utilized in a manner to disestablish the dual school system.

7. A principal, three coaches, and a band director, all of whom are white, have been assigned to Jefferson Davis High School, which is still under construction and will be in operation beginning in the fall of 1968.

8. The defendants and their agents have caused an athletic schedule to be prepared for the proposed Jefferson Davis High School that includes contests only with predominantly white schools. Similarly, they have caused athletic schedules to be prepared for other schools in the Montgomery system that have predominantly white schools competing only with other predominantly white schools and that have predominantly Negro schools competing only with other predominantly Negro schools.

9. The defendants and their agents have taken other steps that have caused students and parents who will be

exercising choice forms to understand that the proposed Jefferson Davis High School is intended to be predominantly white. These steps include contacts for financial support and the release of publicity about the proposed school.

10. Defendants anticipate that two new elementary schools will begin operations in the fall of 1968.

11. Unless enjoined by this Court, defendants will continue to assign new teachers, student teachers, and substitute teachers on a racially segregated basis and will cause new schools to be opened in 1968 to perpetuate the dual school system.

This motion will be based on the pleadings, papers, and evidence on file in this case, the deposition of Walter T. McKee, and the testimony and exhibits to be adduced at the hearing of said motion.

Respectfully submitted,

CHARLES QUAINTANCE
FRANK ALLEN
Attorneys
Department of Justice

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Certificate of Service (omitted in printing)

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Plaintiffs' Motion

(Filed February 9, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs in the above entitled cause and join with the United States in praying for the relief set forth in its Motion filed in this Court on February 7, 1968. The Plaintiffs further move the Court for the following additional relief:

1. That the Defendants be enjoined from failing and refusing to provide transportation for students who qualify therefor to the following proposed new schools:

Jefferson Davis High School,
Southlawn Elementary School, and
Peter Crump Elementary School.

2. That the Defendants be enjoined from transporting students beyond schools in which their race is a minority to other more distant schools in which their race is a majority.

GRAY, SEAY, LANGFORD & PRYOR

Stipulation

(Filed February 17, 1968)

The parties by their attorneys stipulate as follows:

1. Attachment A, which is attached hereto and made a part hereof, lists the names of persons available for substitute teaching assignments in Montgomery County in 1967-68;

2. Those persons whose names on Attachment A are preceded by the letter W are white persons; and

3. Those persons whose names on Attachment A are preceded by the letter N are Negroes.

Executed this 17th day of February, 1968.

JOSEPH D. PHILLIPS
Attorney for the Defendants

FRED D. GRAY
Attorney for the Plaintiffs

CHARLES QUAINTANCE
Attorney for the United States

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

SUBSTITUTE TEACHER LIST

1967-68

NAME*	TELEPHONE	ADDRESS	SCHOOLS, GRADES, OR SUBJECTS	COLLEGE WORK
W ADAIR, Bessie P.	265-3352	1131 Magnolia Curve	Elem. & Jr. High	None
W ALLEN, Eva Greer	272-4471	3450 Biltmore	Elementary	2 yrs.
N BALDWIN, Emma A.	265-1850	1430 Rushing St.	Elementary	4 yrs.
W BARNES, Marie G.	262-8158	115 Arlington Rd.	LANIER only	5 yrs.
W BAXTER, Virginia L.	265-5621 Ex. 3494	Maxwell AFB, 311 Center Dr.	Soc. St., French, & Elementary	4 yrs.
W BEECHER, Peggy Sudduth	272-5409	615 Sir Michael Dr.	Elementary	4 yrs.
N BELL, Fannie Idell (Ramer-562-3606)		Rt. 2 Box 59, Ramer, Ala.	Elem.	4 yrs.
N BIRCH, Arnetta Dabney	265-9327	620 Cedar St. #M	Elementary	4 yrs.
N BIVINS, Lillie Shuford	264-0113	1242 Cleveland Ave.	Elementary	4 yrs.
W BONDOIN, Natala B.	262-7622	904 Felder	Upper Elem. & Jr. High	2½ yrs.
W BUSBY, Anna U.	264-3023	3553 Cloverdale Rd.	Jr.,Sr.,High & Elem.	3½ yrs.
N BYRDSONG, Rosa Lee	265-5971	2552 Airwood Dr.	Elementary	4 yrs.
W CAMP, Frances P.	263-6153	2630 N. Fernway	RETARDED CHILDREN'S SCH.	4 yrs.
N CAMPBELL, Rosa Lett	263-0713	718 Sutter St.	Elementary	4 yrs.
W CARROLL, Sara Nell G.	272-3376	3607 Willow Lane Dr.	Elementary	1½ yrs.
N CARTER, Betty J.	262-8533	3041 Milton Rd.	Elem. & High (Music)	4 yrs.
N CARTER, Ruby Lee	265-6829	1013 Pelham St.	Elementary	4 yrs.
W CARTER, Sybil Davis	272-0570	919 Frontenac Court	FLOWERS only	1 yr.
W CHACONAS, Georgianna K.	265-5621 Ex. 6498	Qtrs. 614-B Maxwell AFB	Elem. & High	2 yrs.
W CHANCEY, Beulah H. (Grady-584-7548)		Rt. 2 Box 164 Grady, Ala.	Ramer, Pine Level, Goodwyn & Retarded Children's	4 yrs.
W COE, Lucy E.	264-7617	3024 Crawford St.	Elem. & Jr. High	1 yr.
N COOLEY, Frankie Armstead	264-6249	758 S. Holt St.	Elementary	4 yrs.
W COULTER, Florence K.	265-7783	958 Ridgecrest St.	Elementary	None
N CURLEY, Eliza A. J.	263-0408	940 Adeline St.	Elementary	4 yrs.
N DALTON, Johnnie Pat	262-4247	1434 Cleveland Ave.	Elementary	4 yrs.
N DANDY, Dolores L.	265-6620	1326 Tuttle Ave.	Home Ec. & Science	4 yrs.
W DeKING, Marilyn S.	265-0167	3739 S. Court St.	ART, Soc. St., Spanish, English & Elem.	4 yrs.
W DELLINGER, Mary Melra	272-1471	871 Greg Dr.	English	4 yrs.
W DeRAMUS, Evelyn K.	264-9730	521 Japonica St.	Elementary	2 yrs.
W DERICKSON, Myrtis M.	262-0281	3235 LeBron	Elementary	2 yrs.
W DeVANE, Haroll M.	288-9858	Rt. 1 Box 136-A Letohatchee, Ala.	Soc. St., Typing, Eng., & Upper Elem.	4 yrs.
W DIAMOND, Boots Carroll	272-2131	165 Kent St.	Elem. & Commerce	4 yrs.
N DUNCOMBE, Juanita Deloris	263-2753	628 Woodrow St.	Elementary	4 yrs.
W DUNLAP, Lennie F.	262-5813	154 Arlington Rd.	Elementary	2 yrs.
W EICH, Lorah Smith	264-7986	1841 Hill Hedge Dr.	French, Span., art, Eng., sci., Elem.	4 yrs.
W ELROD, Jimmie G.	265-6511	3179 Norman Bride Rd.	Elementary	2 yrs.
N EVANS, Janie Hood	264-4972	2661 W. Edgemont Ave.	Elementary	4 yrs.
W FIELDS, Mary	262-0925	3460 Wilmington Rd.	Eng., sci., commerce, soc. st., & Elem.	2 yrs.
N FLOWERS, Ethel Myers	288-4044	Rt. 1 Box 43 Sprague, Ala.	Elementary	4 yrs.
W FRASER, Nina Rust	264-1804	857 Portland Ave.	LANIER & LEE (English)	5 yrs.

* In reporting Substitute Teachers on your pay roll, please use names exactly as listed above.

W GOOCHER, Allison C.	288-9451	4262 Sunshine Drive	Social Studies	4 yrs.
W GORDON, Sandra H.	265-9181	2800-A Brewton St.	Soc. St. & English	4 yrs.
N GREEN, Elizabeth Pullom	263-0672	720 Clarke St.	Elementary	4 yrs.
N GREEN, Ernestine J.	265-3644	636 Maggie St.	Elementary	4 yrs.
N GREENE, Willetta J.	263-1932	3223 Suwanee Dr.	Elementary	4 yrs.
W GRISWOLD, Deborah A.	265-6546	3219 E. Fernway Dr.	CHILDREN'S CENTER	4 yrs.
W GUEST, Fay Stephenson	263-2735	3576 Cloverdale Rd.	Elementary	4 yrs.
W HALL, Ann J.	272-4475	236 Kiefer Dr.	EAST Montgomery only: S.S., Eng. & Commerce	4 yrs.
N HARRIS, Myla S.	263-2095	3115 Mobile Dr.	Elementary	4 yrs.
N HARRISON, Elizabeth	264-6745	2024 Mill St.	Elementary	4 yrs.
N HARRISON, Patricia Yvonne	262-0933	742 S. Ripley St.	Elementary	4 yrs.
W HAWK, Ginger S. (LaPine-537-4342)		LaPine, Ala.	MONTG. COUNTY HIGH & PINTLALA only	2 yrs.
W HEUSTESS, Jessie R.	262-2062	1443 Adrian Lane	LANIER only	5 yrs.
W HICKS, Dorothy C.	262-1539	36 W. Vandiver	Elem. & Jr. High	2 yrs.
W HINCK, Judith F.	272-3823	751 N. Georgetown Dr.	Elem.	4 yrs.
N HINSON, Florence I.	264-1356	735 Erskine St.	Elementary	4 yrs.
N HOBDLY, Lollar Pearl	272-7986	Rt. 5 Box 303-Y	Elem. & Soc. St.	4 yrs.
W HOLLEY, Lucile F.	262-0085	11 Courtland Dr.	Elementary	4 yrs.
W HOLLEY, Maggett H.	272-5518	2725 Biltmore Ave.	Elem.	2 yrs.
N HUDSON, Jessie Mae	265-5143	2436 Lower Totumpka Rd.	Elementary	4 yrs.
W HUGHES, Louise C.	288-2252	2645 Baldwin Brook Dr.	Elem. & High Eng. & Soc. St.	2½ yrs.
W HUGHES, Mertie C.	262-4379	321 N. Capitol Parkway	Elementary	2 yrs.
N HUNTER, Ganola N.	263-5687	3344 Roundtree Rd.	Elementary	4 yrs.
W HYDE, Harriet H.	265-3693	1827 Norman Bridge Rd.	P. E. & Soc. St.	4 yrs.
N JACKSON, Lalia Logan	264-0126	1023 E. Washington	Elem. & Jr. High	4 yrs.
W JAMES, Edith Blythe	264-6609	2707 Newport Rd.	Jr. & Sr. High Soc. St. & Upper Elem.	4 yrs.
W JAMES, Nancy C.	272-1231	3926 Johnstown Dr.	LEE HIGH only	4 yrs.
N JENKINS, Corene R.	269-1141	668 Mill St.	Elementary	4 yrs.
W JENNINGS, Bettye L.	272-6163	3621 Princess Ann	EAST Montg.: Eng., Music, Typing, & Elem.	2 yrs.
W JERNIGAN, Nelda H.	262-8974	1875 Gillespie Dr.	DANNELLY only	2 yrs.
W JOHNSON, Iberia Pierce	272-0304	Rt. 5 Box 283-A	HEAD, DALRAIDA, & FLOYERS	4 yrs.
W JOHNSON, Sarah Jane	263-6584	36 Woodall Circle	RETARDED CHILDREN'S & CHILDREN'S CENTER	1 yr.
W JONES, Dorothy Leona	269-2723	3085 Highland Ave.	Elem. & High	4 yrs.
N JONES, Lillie Mary	264-7355	1810 Michael St.	Elementary	4 yrs.
N JORDAN, Eunice Sylvene	272-3329	Mt. Meigs, Ala.	Elem. & Jr. High	4 yrs.
W LANEY, Dorothy Y.	272-6789	2737 Sumter	Elementary	2½ yrs.
W LEACH, Marybeth Jones	262-0154	3742 Narrow Lane Road	Upper Elem., Eng., S.S., Home Ec., French & P.E.	
W LEE, Bobbie E.	272-4354	4341 Donovan Dr.	Elem. & Jr. High	2 yrs.
W LINDLEY, Eleanor M.	263-5353	1887 Robison Hill Rd.	Elementary	2½ yrs.
W LINDSEY, Hilda L.	265-4390	3685 Southmont Dr.	BELLINGRATH, HARRISON, & DAVIS	2½ yrs.
W McATEER, Betty S.	288-2453	3025 Princeton Rd.	JOHNSON, BEAR, DANNELLY & FLOYD	4 yrs.
W McCLURKIN, Alma M.	272-7949	Pike Road, Ala.	Eng., French, Span., Soc. St. & Elem.	4 yrs.
W McCORD, Sarah C.	262-2471	825 Park Ave.	BELLINGRATH, LANIER & FLOYD	4 yrs.
W McCORD, Susie S.	263-3766	59 Garden St.	EAST MONTGOMERY Elem.	1 yr.
N McDADE, Elizabeth A.	262-3005	425 Yougono Curve	Soc. St. & Home Ec.	4 yrs.
W McDONELL, Evelyn G.	262-3614	1831 James Ave.	EAST MONTGOMERY, LANIER, & BALDWIN	1 yr.
N McGINNIS, Mary L.	263-9059	326 Moehan St.	ENGLISH & MUSIC	4 yrs.
W McMORTER, Margaret P.	272-6644	3769 Vaross Ferry Rd.	EAST MONTGOMERY - Jr. High & Elem.	3 yrs.
W MALLOY, Hilda B.	265-8998	3447 Southview Ave.	Elementary	4 yrs.
W MARTIN, Carolyn Baker	288-0195	2210 Woodley Rd.	Elem. & Jr. High	5 yrs.
MARTIN, Virginia Scott	272-7016	St. 2 Pike Rd., Ala.	Upper Elem.	3 yrs.
[illegible] Juan	265-[illegible]52	500 [illegible] Courts	Elementary	4 yrs.
N MEADOWS, Elizabeth Hazzard	264-5470	1137 Oak St.	Elementary	4 yrs.
W MELTON, Edna C.	264-0116	2816 Spann Place	Elementary	2 yrs.
W METCALFE Elizabeth B.	264-7214	3534 Cambridge Rd	JOHNSON, DANNELLY BEAR FLOYD & FOREST AVE.	4 yrs.

W MIDDLETON, Ethel D.	265-3671	2722 Oxford Drive	BEAR & DANNELLY	5 yrs.
W MILLIS, Louise Alston	272-2642	1215 Noremac Road	Elem., Jr. & Sr. High	4 yrs.
W MOODY, Frances Galloway	264-5528	2258 Narrow Lane Rd.	Jr. High Art & Elem.	3 yrs.
W MOORE, Ella Mae	272-1835	3529 Dalraida Court	EAST MONTGOMERY: Elem. & High	1½ yrs.
N MOORE, Wilma A.	265-5129	3311 Mobile Dr.	Elementary	4 yrs.
W NESSMITH, Mary R.	265-7823	3011 Boxwood Dr.	Eng., S.S., & French	4 yrs.
W O'DONNELL, Bonnie H.	264-2990	1823 Palmetto St.	Elementary	2 yrs.
W PALMER, Hazel H.	262-7918	2435 LeRuth Ave.	DANNELLY, JOHNSON, FOREST AVE., MORNINGVIEW	2 yrs.
W PARKER, Mary A.	272-4635	46 Marlborough	Elem. or Jr. High	2 yrs.
W PARKS, Barbara H.	263-2807	2192 Rosemont Dr.	Jr. High English	4 yrs.
N PEARSON, Helen Evans	263-2078	3048 Tyler Road	Elementary	4 yrs.
N PERSON, Susie M.	262-8729	3359 E. Tuskegee Circle	Elem. & Soc. St.	4 yrs.
W PETRANKA, Mary L.	263-1215	617 Thorn Place	Elem. & High	4 yrs.
N PIERCE, Mary L. B.	264-0063	3511 Mobile Dr.	Soc. St. & Eng.	4 yrs.
N PORTER, Annie Lee	263-3609	2745 Vandy Court	Elementary	4 yrs.
N PORTIS, Cleo D.	263-9913	1328 Tuttle St.	Science & Math	4 yrs.
W RAWLS, Ruby Tompkins (Ramer-584-7767)		Rt. 1, Ramer, Ala.	RAMER & PINE LEVEL	None
W RAY, Geraldine H.	265-1737	423 Fourth St., Boylston	CHISHOLM & HIGHLAND GARDENS	
N RELF, Cleona Gray	263-3561	4037 Oak Street	Elementary	4 yrs.
W RICE, Sue	262-0502	908 Cloverdale Road	Jr. High Latin & English & Elem.	2 yrs.
W RICHARDSON, Elizabeth S.	262-3788	3316 Montezuma Rd.	Elementary	2½ yrs.
W RICKER, Iva Nelle	288-1528	2034 Beverly Dr.	Upper Elem.	5 yrs.
W ROBERTSON, Sara Booker	272-7686	Pike Road, Alabama	Elementary	1½ yrs.
N ROSS, Lillie Belle	263-6056	1225 Hutchinson St.	Elementary	4 yrs.
W RUSHING, Elise Terry	272-5186	3739 Honeysuckle Court	Soc. St., Music, Primary	2 "
N SAMS, Eva	264-1549	1229 Hutchinson St.	Elementary	4 yrs.
W SAMUELS, Valeria Ward	264-0515	3365 Wilmington Rd.	Ele. & High	2 yrs.
W SCHAUM, Mary T.	263-3877	926 Cloverdale Rd.	SOUTH MONTGOMERY	2½ yrs.
W SCOTT, Bettie Hill	265-8485	641 E. Fairview Ave.	Primary	4 yrs.
W SMITH, Eugonia M.	265-5930	3424 Somerville Dr.	Elem., Home Ec., P.E., & Soc. St.	2 yrs.
N SMITH, Jean E.	264-6224	814 S. Union St.	Elem. & Soc. St.	4 yrs.
W SMITH, Judith A.	272-6256	615 Joryne Drive	Elementary	2 yrs.
N SMITH, Mabel Williams	264-9869	3047 Milton Rd.	Elementary	4 yrs.
W SMITH, Sylvia L. (Ramer - 562-3515)		Rt. 2, Ramer, Ala.	MONTG. COUNTY HIGH	None
W STRINGFELLOW, Anna Matthews	263-1970	1241 S. Hull St.	SOUTH MONTGOMERY Elem.	3 yrs.
W TANKERSLEY, Corrie Hill	262-4692	2321 W. Cloverdale Park	Algebra, Latin, Soc. St. & Elem.	4 yrs.
W TEMPSKE, Mary Beatrice	272-1976	3739 Marie Cook Dr.	Elem. & Jr. High social studies	4 yrs.
N THOMAS, Addie Lucille	264-9890	926 Cleveland Ave.	Soc. St. & English	4 yrs.
N THOMAS, Gertrude J.	265-1416	2016 Council St.	Elem. & Home Ec.	4 yrs.
W VAUGHAN, Olivia B.	265-1122	615 Hubbard St.	CLOVERDALE only	2 yrs.
W WAGGONER, Nell H.	264-5678	4003 Narrow Lane Road	Primary	4 yrs.
W WARNER, Janet	264-2663	Rt. 2 Box 417	Elementary	2 yrs.
N WASHINGTON, Glover Ivy	263-9105	661 Emerson St.	Elementary	4 yrs.
N WASHINGTON, Nettie D.	264-0302	611 W. Dixie Dr.	Elementary	4 yrs.
N WEBB, Annie G.	265-0602	566 N. Union Circle	Elementary	4 yrs.
W WEISHEIT, Carolyn Adella	265-1117	3515 S. Court St.	BELLINGRATH & HARRISON	2 yrs.
W WILFERTH, Myldred E.	272-5243	3568 Prince George Dr.	Elementary	2 yrs.
W WILLIAMS, Gloria Bingham	288-4644 or 288-4655	Sprague, Alabama	PINTLALA & MONTGOMERY COUNTY HIGH	none
W WILLIAMS, Willette H.	265-1030	460 Heustess St.	P.E., Hist., Eng., & Elementary	none
W WILLIAMSON, Margaret R.	262-4053	431 Martha St.	Elementary	1 yr.
N WILSON, Addie Marie	262-8216	1500 S. Hull St.	Elementary	4 yrs.
N WILSON, Lillian Olivia	269-4201	1232 Payne St.	Elementary	4 yrs.
W WINDSOR, Mary Ellen	272-2460	3519 Dalraida Court	EAST MONTG. - Elem.	1 yr.
W JOHNSON, Helen Maxine	272-3601	2940 Biltmore	Elementary	3 yrs.
N ROBERTSON, Brenda Joyce	264-1917	1409-B Wilcox St	Elementary	4 yrs.

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

September 14, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To All Principals:

Please add the persons listed below to your Substitute Teacher List, and let me remind you that you are to call ONLY those people whose names are sent to you from this office! DO NOT call anyone who is not on the official lists sent to you or about whom you have not been contacted by this office. Substitutes are required to have on file in our office health certificates, teacher's certificates, chest X-rays, and social security names and numbers. All of these matters must be cleared in this office before their names can be sent out to you; otherwise, complications arise in our office as well as the bookkeeping department at pay roll time.

Please cooperate with us in this matter, and we will try to send out supplementary substitute lists monthly. If you know of anyone who would like to be placed on the list, send them to see me and we will clear those items and get the names out to you as soon as possible.

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/zhd

	NAME*	TELEPHONE	ADDRESS	SCHOOLS, GRADES, OR SUBJECTS	COLLEGE WORK
W	ALLEN, Donna Mai	262-7477	44 Ogden Road	Library, Spanish, Eng.	5 yrs.
W	ARCHER, Hellen Cannon	264-3812	1912 Johnson St.	LEE HIGH only	3 yrs.
W	BALKEMA, Mary H.	272-3282	330 Hillside Rd.	Jr. & Sr. High: Sci., Math, & Soc. St.	4 yrs.
W	DENNIS, Lou Ellen	263-3961	3469 Warrenton Rd.	SOUTH MONTG.(Primary)	3 yrs.
W	DeVANE, Jo Anne	288-9868	Rt. 1 Letohatchee	So. Montg. & County (Elem., commerce & Home Ec.)	1 yr.
W	DUNMAN, Frances Stephenson	265-6107	3557 Gaylord Pl.	Elementary	2 yrs.
W	GARNER, Jane Helms	265-4122	3412 Richmond Rd.	Eng. & Soc. St.	4 yrs.
W	GUY, Sharon S.	272-5299	801 Joryne Dr.	Eng., French, Home Ec., Hist. & Art	4 yrs.
W	HUDDLESTON, Grace M.	264-2556	2202 Allendale Rd.	Eng., Hist., or Elem.	4 yrs.
W	JOHNSON, Alva Simpson	265-2793	2728 Fisk Rd.	SO. MONTG.: Elem. or Hi.	2 yrs.
W	LONG, Josefine Maria	288-5421	1531 Flamingo Lane	Elementary	3 yrs.
W	MacMILLAN, Anne Jones	288-4818	2648 Oxford Dr.	SO. MONTG.: Elem. & Jr.	4 yrs.
W	McCRACKEN, Dorothy S.	272-4098	1208 Karen Rd.	E. Montg.: Eng., Hist. & Elem.	4 yrs.
W	McLAMB, Martha L.	262-0108	3199 E. Fernway Dr.	Elementary	2½ yrs.
N	MADISON, Katie J.	264-3511	324 Springhill Ave.	Elementary	4 yrs.
N	MANSELL, Harnethia Naomia	262-6770	3204 McElvy	Elementary	4 yrs.
W	MORRISON, Ellon Young	265-9685	547 S. Perry St.	Elem. & Jr. High	4 yrs.
W	MOSS, Judith Ann	264-9821	403 S. Perry St.	Upper Elementary	4 yrs.
W	PELHAM, Kittie K.	264-8589	1602 S. Hull St.	Jr. & Sr. Hi & Elem.	4 yrs.
W	SPENCER, MaryAnn Eleanor	262-7010 or 272-7474	1828 Vaughn Lane	Eng., French, & Elementary	3 yrs.
W	WHITFIELD, Virginia Rath	262-2866	2137 Campbell Rd.	Eng., Speech, S.S.	4 yrs.
W	WHORTON, Jean Elliott	584-7713	Pine Level, Ala.	RAMER & PINE LEVEL	1 yr.
W	WILLIAMSON, Juno Dale	272-4706	1209 Cottondale Rd.	Jr. Hi: Speech & Elem.	2 yrs.
[illegible]	WILSON, Mamie Jo Ellington	285-4362	Rt. 1 Millbrook	Elem.	4 yrs.
[illegible]	WILSON, Mary Jo	272-5068	3361 Archerfield Rd.	EAST MONTG. (Elem. & Jr. Hi)	none

CHANGE Social Security name of Marilyn S. Deking on list to: MARILYN SCHMITT DeKING

* SOCIAL SECURITY NAMES to be used on pay roll

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MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

November 1, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To All Principals:

Please add the persons whose names are listed below to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/rhd

	NAME	TELEPHONE	ADDRESS	SCHOOLS, GRADES, OR SUBJECTS	COLLEGE WORK
W	BALDWIN, Ann Sessoms	272-5462	3531 Milan Drive	French or English	4 yrs.
N	BELLAMY, Laticia S.	265-4975	1209 Payne Street	Home Ec., Sci., & Elem.	4 "
W	CHRISTENBERRY, Mary E.	288-0736	731 Alamo Drive	Soc. Studies & Upper Elem.	4 "
W	CONNELL, Annie Lee	262-8203	714 Terrace Ave.	English & Spanish	4 "
W	GORDON, Beppy L.	288-0747	Rt. 4 Box 85	Math & Law	4 "
W	JENKINS, Suzy	288-2767	1204 E. Audubon Rd.	LEE ONLY	4 "
W	KILLIAN, Frank, Jr.	272-5635	3043 Ashley Ave.	Mathematics	B.S. & M.S
W	KILLOUGH, Elizabeth Anne	272-0402	1037 Grenada Dr.	Eng., Spanish, & Elementary	---
W	LOVAN, Ruth E.	263-6514	3346 Montezuma Rd.	Math, Soc. Studies, & Elem.	4 yrs.
W	LYNCH, Margaret Mathes	272-2455	3707 Honeysuckle Court	Home Ec., Sci., S.S., Eng., & Elem.	4 yrs.
W	RAGSDALE, Carol Land	264-8588	22 E. Fairview Ave.	Music, Commerce, Elem.	BME & MA
W	RALEY, Mary Dupree	288-4828	Rt. 1 Box 341-D	High School & Elem.	4 yrs.
W	ROBINSON, Barbara Drum	272-3352	117 E. Salem Dr.	Sci., History & Elem.	4 "
N	SANDERS, Catherine Maudest	263-0166	1260 S. Holt St.	Elementary	4 "
W	SERWIN, Harlynn M.	288-2851	1727 Bancroft	Sci., Soc. St. & Elem.	4 "
W	STUART, Lucy	262-2031	155 N. Haardt Dr.	Elementary	4 "
N	TALLEY, Missie Doll	263-5314	2142 Stella St.	Elementary	5 "
W	TUCKER, Shirley Gaither	264-9660	542 Clayton St.	CHILTON only	----
W	VARTANIAN, Margaret White	264-6971	3507 Princeton Rd.	Eng. & Soc. St.	4 "

Dorothy Y. Laney has requested that she receive calls from junior high schools as well as elementary schools.

Lou Ellen Dennis has requested that she receive calls from all elementary schools instead of being limited to South Montgomery as previously listed.

NEW ADDRESS & PHONE NO. for Edna C. Melton, who is already on the Substitute List.
300 Carol Villa
Phone: 272-0989

PLEASE REMOVE the following names from your Substitute Teacher Lists:

ELIZABETH PULLOM GREEN
DEBORAH A. GRISWOLD
HELEN MAXINE JOHNSON
ELIZABETH [illegible] JONES

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

December 1, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To All Principals:

Please add the following persons to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/rhd

W	DANIELS, Jean L.	264-8880	1424 Deer Street	Elementary	4 yrs.
W	DRY, Charlotte Lola	264-5839	434 S. Panama St.	Home Ec., Sco, & Elem.	4 yrs.
W	HUXFORD, Linda Teague	288-2709	1125 Buckingham Dr.	Eng., Home Ec., & Elem.	4 yrs.
W	POPE, Betty	265-2503	700 Terrace Ave.	Elem. & High	4 yrs.
N	PRINCE, Rosa Mae	265-9185	3354 Loveless Curve	Elementary	4 yrs.
W	SEXTON, Anna Louise	265-6818	1931 Speigle St.	Elementary	1 yr.
N	SHARPE, Algia C.	264-3681	2637 W. Edgemont	Elementary	4 yrs.
W	TOMLINSON, Virginia M.	272-6643	3797 Royal Crest Dr.	Elem. & High: Eng. & S.S.	4 yrs.
N	WILLIAMS, Eliza Larkin	272-0974	4105 Bienville Rd.	Elementary	4 yrs.

REMOVE from List:

Nancy C. James
Wilda B. Malloy
Harnethia Naomia Mansell
Carolyn Baker Martin

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

January 1, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To all Principals:

Please add the following persons to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/rhd

W	BEAN, Carolyn B.	265-3165	3980 Dallas Dr.	Soc. Studies & Elem.	3 yrs.
W	BOZEMAN, Sara Charles	265-4643	1138 Rosedale	EAST Montgomery - Elem.	4 yrs.
N	DAVIS, Arthur M.	263-9346	405 McKinne St.	Eng., French, & S.S.	4 yrs.
W	DePREIST, Imogene	272-0683	1949 Cottingham Dr.	Elementary	4 yrs.
W	FOSTER, Marcia W.	264-1481	2813 Spann Place	Eng., Commerce, & Elem.	---
W	GOODWYN, Mary H.	263-7475	2537 McGehee Rd.	BEAR SCHOOL ONLY	
W	JOHNSON, Annie Grace	272-3847	139 Holliday Drive	Elementary	----
	KURTZMAN, Elaine	272-7490 Ex. 4146	Gunter Air Force Base Qtrs. 204-C	Math & Soc. Studies	5 yrs.
W	MITCHELL, Sandra F.	272-6049	47 Holliday Dr.	Elem. & High School	2 yrs.
W	MORRIS, Barbara G.	272-2601	3538 Wareingwood	Home Ec., Eng., Hist., Shorthand, Typing	4 yrs.
W	RIDOLPHI, Elizabeth H.	263-9021	2256 Rosemont Dr.	Elem. (Primary)	½ yr.
W	SEWELL, Virginia F.	288-0032	1013 Lynwood Dr.	Elem. (Primary)	4 yrs.
N	WILLIAMS, Lloyd G., Jr.	263-9917	3034 Caffey Dr., Apt. K	Soc. St. & English	4 yrs.

REMOVE from list:

Linda Teague Huxford
Patricia S. Norman

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office — February 1, 1968

SUPPLEMENTARY SUBSTITUTE LIST

To all Principals:

Please add the following persons to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett
Associate Superintendent

WSG/rhd

W	ADAMS, Louise	265-3031	443 S. Highland Court		Elementary	4 yrs.
W	ADAMS, Patricia S.	272-2500	785 Duval Dr.		DAVIS SCHOOL	4 yrs.
N	ASHLEY, Jo Ann Young	263-9693	705 N. Union Circle		Elementary	4 yrs
W	BALLARD, Ida T.	265-8127	3238 Montezuma Rd.		Elem & P.E.	4 yrs.
W	BERRY, Linda	262-0668	1500 Gilmer Ave.		Elem.	4 yrs.
W	CHAPPELL, Charles Wilson	262-2978	1932 James Ave.		Soc. St., Sci., Eng.	1 yr.
W	CROSS, Willie Mack (Mrs.)	272-4593	3542 Wareingwood		Elementary	None
W	DeBRAY, Jananne Booth	265-4923	3547 Norman Bridge Rd.		Eng., Speech, S.S., Upper Elem.	4 yrs.
W	DUFFEY, Barbara C.	288-4684	Rt. 1 Box 275-B	&	Elementary	4 yrs.
W	EVANS, Valeria M.	262-8724	Rt. 4 Box 89-D	EAST MONTG.,	Elem. & Jr. Hi	None
N	FREEMAN, Evergreen Walker	263-5132	1009 Lake St.		Home Ec. & Soc. St.	4 yrs.
N	FULLER, Mary C.	272-7194	Rt. 3 Box 426		Home Ec. & Soc. St. & Elem.	4 yrs.
W	GRAY, Yvonne S.	288-6172	Rt. 1 Box 266		Elementary	None
W	GREENLEE, Ruth T.	265-0867	856 E. Patton Ave.		Elem. or High	None
W	JOHNSON, Nancy M.	263-7322	22-B Southmont Court		Elementary	4 yrs.
W	KELLY, Rosa R.	264-5175	121-A E. Patton Ave.	SOUTH MONTG.,	Primary	
W	MORRIS, Jane Owen	265-9102	1018 Augusta St.		Eng., Home Ec., & Upper Elem.	4
W	NORTON, Rebecca Black	262-1820	2543 College St.		Elementary	2 yrs.
W	REYNOLDS, Jesse Preston	269-4684	3700 Mobile Rd.		Sci., speech, Eng. & Soc. St.	4 yrs.
N	RUSTON, Maxine	26[illegible]525	2620 Rutland St.		Chemistry, biology, & Math	4 yrs.
W	SCHOFIELD, Charles Malcolm	263-1478	415 Fourth St.		Soc. St. & economics	4 yrs.
W	STANFORD, Brenda L.	263-1883	1704 S. Perry St.		Elementary	4 yrs.
W	VICKERY, Mary N. H.	263-2905	1704 S. Court St.		Eng. & Soc. St.	4 yrs.
W	WATERS, Myrtle Elise	269-4296	3207 E. Fernway Dr.		Elem., Sci., Eng., Jr. Hi	none
N	WINSTON, Frankie Madison	272-4525	Rt. 3 Box 404		Elementary	4 yrs.

CHANGE IN ADDRESS & TELEPHONE NO.:

CHRISTENBERRY, Mary E. 3151 Woodfern Dr., New Telephone: 265-5808

PLEASE REMOVE THE FOLLOWING PERSONS FROM YOUR SUBSTITUTE LIST:

SHARON S. GUY
ANNE JONES MacMILLAN
JUDITH ANN MOSS
MARIE JO ELLINGTON WILSON

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Memorandum Opinion

(Filed February 24, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motions of the United States filed August 17, 1967 and February 7, 1968, in both of which the United States requested this Court to require defendants to take further steps designed to disestablish the dual school system in Montgomery County, Alabama. Each of these motions seeks further faculty desegregation and the motion of February 7, 1968, asks this Court to require defendants to cease operation of their athletic program on a racially segregated basis and to take other steps designed to insure that certain new schools that have been and are being constructed as a part of the Montgomery County School System are operated on a desegregated basis. The plaintiffs join the United States in each of said motions.

This Court conducted a hearing on the Government's motion of August 17, 1967, in September, 1967. No formal findings or conclusions were made at that time by reason of the fact that the 1967-68 school year had already commenced, and the matter was therefore held in abeyance. On February 9, 1968, a hearing was conducted on the Government's second motion and the motion of the plaintiffs filed the same date wherein the plaintiffs seek more specific relief concerning transportation to the new schools.

Upon consideration of the evidence and the several exhibits thereto, this Court now makes the appropriate findings of fact and conclusions of law, embodying the same in this memorandum opinion. The original decree requiring desegregation of the public schools in Montgomery County, Alabama, was entered by this Court on July 31, 1964. After making appropriate findings and conclusions to the effect

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that the Montgomery County Board of Education was operating a segregated school system based upon race, this Court entered an injunction that enjoined the defendants from failing to provide public school education for Negroes, and other members of their class, in a school or schools that were not operated on a racially segregated basis, and from failing to take immediate steps, to be effective for the school term commencing September, 1964, to desegregate the 1st, 10th, 11th and 12th grades in the public schools of Montgomery County, Alabama. In this decree, this Court approved a freedom-of-choice plan that had been proposed by the defendants as a means for discharging the affirmative duty placed upon them. *Brown* v. *Board of Education of Topeka,* 347 U. S. 483 (1954), and *Brown* v. *Board of Education of Topeka,* 349 U. S. 294 (1955). On March 22, 1966, this Court by formal order required the Montgomery County Board of Education to file a more formal and comprehensive plan for desegregation of the public school system in Montgomery County. This plan provided for complete desegregation of the schools for each grade in each school commencing with the September, 1967 school term; the plan also provided with regard to services, facilities, activities and programs:

> A student shall have full access to all services, facilities, activities, and programs (including transporta-

tion, athletics, and other extracurricular activities) that may be conducted or sponsored by, or affiliated with the schools of the system. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

Further, the plan provided with regard to faculty and staff:

> Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.
>
> In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.
>
> The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

Teachers and other professional staff will not be dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance, where one or more teachers or other professional staff members are to be displaced as a result of desegregation or school closings, they shall be transferred to any position in the system where there is a vacancy for which they are qualified.

At the time this Court entered its order in July, 1964, there were in attendance approximately 15,000 Negro children and approximately 25,000 white children in the Montgomery County School System. The system was completely segregated by reason of race. No faculty desegregation was ordered until the commencement of the 1967 school year.[1] The evidence now presented reflects that during the current school year the student population continues to be about the same as in 1964 and there are now approximately 550 Negroes attending, through the freedom-of-choice procedure, traditionally white schools. No white children are attending traditionally Negro schools.

[1] The order made and entered in this case on March 22, 1966, required the Montgomery County Board of Education to commence the process of desegregating the faculty and professional staffs commencing with the school year 1966-67. However, on August 16, 1966, in the Mobile, Alabama school case of *Birdie Mae Davis, et al.* v. *Board of School Commissioners of Mobile County, et al.*, 364 F. 2d 896, the United States Court of Appeals for the Fifth Circuit allowed the Mobile, Alabama County Board of Education until the school year 1967-68 to end its policy of hiring and assigning teachers and staff according to race. On August 18, 1966, this Court entered an order reciting, "Uniformity, as well as fairness, requires this Court upon its own motion . . . to amend its order of March 22, 1966, to the extent that the Montgomery County School Board of Education be allowed until the school year of 1967-68 to end this present policy of hiring and assigning teachers and other school personnel according to race."

As of February 9, 1968, 32 classroom teachers in this system were teaching pupils in schools that are predominantly of the opposite race. Defendants employ approximately 550 Negro teachers and approximately 815 white teachers in the system. Practically all the faculty desegregation in the system has occurred in the high schools. While there is some faculty desegregation in the elementary schools in the system, it is extremely small. There has been very little, if any, faculty desegregation in the schools located outside the City of Montgomery.

Since the order of this Court of June 1, 1967, defendants have assigned or transferred approximately 75 new teachers to faculties where their race was in the majority. Since the opening of school in September, 1967, defendants have hired approximately 32 new teachers—26 white and 6 Negro. Of the 26 new white teachers, only six or seven have been placed in predominantly Negro schools. All six Negroes were assigned to predominantly Negro schools. The evidence further reflects that the defendants have failed to take any appropriate steps to insure that

substitute teachers are placed on a nonracial basis. No Negro has yet been a substitute teacher in a traditionally white school in Montgomery County. Negro substitutes were used over 1,500 times in Negro schools during the first semester of the 1967-68 school year. During the same period, white substitute teachers were employed over 2,000 times—only 33 of them in traditionally Negro schools. There are approximately 162 white substitute teachers and 63 Negro substitute teachers available for use in the Montgomery County School System. Twenty-eight of the white substitute teachers whose names are on this list have,

with defendants' permission, limited themselves to working only in predominantly white schools.

Defendants have adopted no adequate program for the assignment of student teachers on a desegregated basis. None of the approximately 150 student teachers used in the Montgomery County School System in the fall of 1967 were assigned to schools predominantly of the opposite race. Four Negro student teachers have very recently been assigned to predominantly white schools. There has been no faculty desegregation in the night schools operated by the Montgomery County School System.

The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968-69.

The evidence in this case reflects that the athletic programs are an integral part of the operation of the public schools in the Montgomery County School System. The Alabama High School Athletic Association is an association made up of approximately 357 Alabama high schools traditionally maintained for white students and the Alabama Interscholastic Athletic Association is an association made up only of Alabama high schools traditionally maintained for Negro students. Each of these athletic associations has adopted rules for the scheduling of athletic contests by its members which have the effect of penalizing member schools if they play athletic contests with schools predominantly of the opposite race. The manner in which these associations accomplish this is through the promulgation of a rule to the effect that if any member school plays

a nonmember school, it is subject to suspension or penalty. Thus the Montgomery County Board of Education, acting through its various school principals and coaching staffs, has allowed its traditionally white schools and its tradi-

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tionally Negro schools to become members of the white and Negro associations, respectively, thereby placing them under the restrictive rules of these associations. Furthermore, the evidence reflects that the defendants through their agents—the principals and coaching staffs—have adopted a policy of scheduling interscholastic athletic contests for its traditionally white schools only with other traditionally white schools, and for its traditionally Negro schools, only with other traditionally Negro schools. The evidence in this case is clear that this manner of operating the athletic programs has had and continues to have the effect of influencing the choice of students within the system.

The evidence further reflects that the defendants have continued to construct new schools and expand some existing schools; certainly, there is nothing wrong with this except that the construction of the new schools with proposed limited capacities geared to the estimated white community needs and located in predominantly white neighborhoods and the expansion of the existing schools located in predominantly Negro neighborhoods violate both the spirit and the letter of the desegregation plan for the Montgomery County School System. Examples of this are the construction of the Jefferson Davis High School, the Peter Crump Elementary School and the Southlawn Elementary School —all in predominantly white neighborhoods—and the expansion of Hayneville Road School and the Carver High

School, both in predominantly Negro neighborhoods. The location of these schools and their proposed capacities cause the effect of this construction and expansion to perpetuate the dual school system based upon race in the Montgomery County School System.

As to transportation, the defendants have failed to eliminate the bus routes where there exists overlapping and duplication based upon race. Thus the defendants have continued to perpetuate the dual school system through their transportation system. The defendants in designating three new schools located in predominantly white neighborhoods, viz., Jefferson Davis High, Peter Crump Elementary and Southlawn Elementary, as "nontransported" schools (schools to which no transportation is provided) are also attempting to further perpetuate the dual school system.

One of the most aggravating courses of conduct on the part of the defendants and their agents and employees relates to the new Jefferson Davis High School to be located in the City of Montgomery and operated commencing with the school year 1968-69. The defendants in locating this

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school placed it in a predominantly white section of Montgomery. The evidence reflects that in determining the capacity of the school they approximated the number of white students residing in the general vicinity and constructed the school accordingly; they have adopted a school name and a school crest that are designed to create the impression that it is to be a predominantly white school; they have hired a principal, three coaches and a band director, all of whom are white; they have actively engaged in a fund-raising campaign for athletic and band programs

only through white persons in the community; they have contacted only predominantly white schools for the scheduling of athletic events and they have made tentative arrangements to join the Alabama High School Athletic Association—the white association. Extensive publicity has been released concerning the white faculty members and the football schedule with all white schools. Discussion of the athletic program has been held by the new school officials only with white athletes. The dissemination of information about spring football practice in pamphlet form has been made by the school staff only to white persons.

All of this means that the defendants have failed to discharge the affirmative duty the law places upon them to eliminate the operation of a dual school system. Under such circumstances this Court considers it necessary and entirely appropriate to establish now more specific requirements governing minimum amounts of progress in the future in these several areas. In establishing these rules, it should be emphasized that strong consideration is given to the ratio of white to Negro students; however, in view of the fact that the plaintiffs and the United States have as of February 21, 1968, filed a motion to supplement the March 22, 1967, order of the three-judge court in *Lee, et al.* v. *Macon County Board of Education, et al.*, 267 F. Supp. 458, in the area of school athletic programs, this Court will not at this time make any further specific findings, conclusions or order concerning the dual athletic program operated by the Montgomery County School System and will not at this time outline any steps that the defendants may be required to take in order to eliminate such practice. This phase of the matter as now presented will be reserved pending hearing and disposition of the motion in *Lee, et al.*

v. *Macon County Board of Education, et al.*, which is presently scheduled for a hearing March 9, 1968.

The manner in which the defendants have constructed new schools, the location and proposed capacity of these

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schools, and the manner in which the defendants have expanded Negro schools and the location of these Negro schools make it clear that the effect of these new constructions and the effect of the expansions have been designed to perpetuate, and have the effect of perpetuating, the dual school system in the Montgomery County schools. Furthermore, the operation of the school bus routes as presently operated by the defendants continues to violate the Fourteenth Amendment of the Constitution. Because of these factors this Court is under a duty and an obligation to outline and specify certain affirmative steps that must be taken by the defendants to eliminate the dual school system based upon race and to overcome the effects of certain efforts that have been made, as above outlined, to perpetuate this dual school system.

In implementing the requirements of this Court's orders heretofore made in this case and the supplemental requirements outlined herein and in the attached supplemental desegregation plan, the Montgomery County School Board, the individual members thereof, and particularly the principals of the several schools should be guided by three *caveats:*

First, the law will not tolerate any further undue delay in the desegregation of the public school systems. It has been almost fourteen years since school boards were placed under an affirmative duty to disestablish their dual school systems based upon race. *Brown* v. *Board of Education of Topeka, supra.* The Courts have recently—particularly in

the Fifth Circuit—emphatically stated that no further delays in the desegregation process would be allowed. This was recognized and reaffirmed by the three-judge court in *Lee* v. *Macon, supra,* in its order of April 15, 1967 (unreported), when it was stated:

> Further delay in the desegregation of Alabama public schools is inconsistent with existing law. The Supreme Court of the United States in *Goss* v. *Board of Education,* 373 U. S. 683 (1963), stated: "Delays in desegregating schools systems are no longer tolerable." See also *Calhoun* v. *Latimer,* 377 U. S. 263; *Watson* v. *City of Memphis,* 373 U. S. 526, and *Bradley* v. *School Board of City of Richmond,* 382 U. S. 103 (1965). The law is clear that state authorities are "duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." *Cooper* v. *Aaron,* 358 U. S. 1, 7. Following this philosophy, the United States Court of Appeals for the Fifth Circuit has refused to permit delay in this area. *Davis* v. *Board of School Commissioners of Mobile County, Alabama,* 322 F. 2d 356 (1963); *Singleton* v. *Jackson Municipal Separate School District,* 348 F. 2d 729 (1965); *United States* v. *Wilcox County Board of Education,* 366 F. 2d 769 (1966).

Second, in the area of desegregating the faculties and staffs in the several schools in the system, the defendants may not justify or excuse any further delay upon the

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ground that some of the teachers are reluctant to teach in schools predominantly of the opposite race. Again, the

controlling legal principle in connection with this phase of the problem was announced by the three-judge court in *Lee* v. *Macon, supra,* in its order of June 14, 1967 (unreported), wherein the Court stated that desegregation of facilities and staffs must be accomplished "either by inducing voluntary transfers by teachers, the filling of vacancies, or, if they cannot achieve faculty desegregation by such means, then by the assignment and transfer of teachers from one school to the other."

Third, that unless the "freedom-of-choice" plan is more effectively and less dilatorily used by the defendants in this case, this Court will have no alternative except to order some other plan used. Caution in this area of the problem was expressed by the three-judge court in *Lee* v. *Macon, supra,* in its order of March 22, 1967, when it stated:

> Invariably in this area of our country the "freedom-of-choice" plan has been chosen by the courts and the school systems themselves as the method to effectuate the requirements of the Fourteenth Amendment in the field of desegregation of public educational facilities. This is the plan which this Court will require—for the time being—these defendant officials to implement throughout the State of Alabama.[27] This Court recognizes that in the freedom-of-choice plan there are many administrative complexities. It may be that these administrative problems will make some other method advisable in the future. It may well be that the freedom-of-choice method of desegregation will not fully

[27] The reasons are obvious why school officials have not chosen other plans such as the "neighborhood school" plan, for under such a plan white students would be immediately required to attend Negro schools located in their neighborhoods.

and completely disestablish the dual public school system based upon race.[28] However, for the time being, provided that all of the factors designed to influence and having the effect of influencing choice be eliminated, the freedom-of-choice plan will be put into effect upon a state-wide basis. It should be emphasized that, if choice influencing factors are not eliminated, freedom of choice is a fantasy. A "freedom-of-choice" plan ordered by a court or adopted by school authorities is not an end in itself; it is but a means to an end. The plan must operate in such a manner as to meet the constitutional mandate of the Fourteenth Amendment. As was stated in the concurring opinion in *Bradley* v. *School Board*, 345 F. 2d 310, 323:

> Affirmative action means more than telling those who have long been deprived of freedom of educational opportunity, "you now have a choice." In many instances the choice will not be meaningful unless the administrators are willing to bestow extra effort and expense to bring the deprived pupils up to the level where they can avail themselves of the choice in fact as well as in theory . . . . The district judge must determine whether the means exist for the exercise of a choice that is truly free and not merely pro forma.

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[28] The United States Supreme Court has not yet ruled on the freedom-of-choice method of ending racial segregation in the field of public education. However, *Goss* v. *Board of Education*, 373 U.S. 688 (1963), has been cited as support for such a plan. See *Bradley* v. *School Board*, 345 F. 2d 310, 318 (4th Cir. 1965).

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Several "freedom-of-choice" plans for desegregating dual school systems based upon race have recently been found

as "not operating in a constitutionally acceptable manner." *Coppedge* v. *Franklin County Board of Education* (E. D. N. D. Aug. 1967), 273 F. Supp. 289, and *Moses* v. *Washington Parish School Board* (E. D. La., Oct. 19, 1967), 276 F. Supp. 834.

In accordance with the foregoing, it is the ORDER, JUDGMENT and DECREE of this Court that the defendants, their agents, officers, employees and successors, and all those in active concert or participation with them, shall adopt and implement the attached supplement to the desegregation plan herein ordered on June 1, 1967.

This Court specifically retains jurisdiction of this cause.

Done, this the 24th day of February, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

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SUPPLEMENT TO DESEGREGATION PLAN

I. Faculty and Staff

A. *Statement of Objective.*

In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

B. *Schedule for Faculty Desegregation.*

1. *1968-69.* At every school with fewer than 12 teachers, the board will have at least two full-time teachers whose race is different from the race of the majority of the faculty and staff members at the school.

At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for the time being, other specific faculty and staff desegregation requirements for future years.

C. *Means of Accomplishment.*

If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filling va-

cancies, then it will do so by the assignment and transfer of teachers from one school to another.

D. *Substitute Teachers.*

Commencing March 1, 1968, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

Commencing with the 1968-69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only

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at predominantly white schools or only at predominantly Negro schools.

E. *Student Teachers.*

Commencing March 1, 1968, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

F. *Night Schools.*

Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program.

II. New Construction

The school board will obtain approval from the State Superintendent of Education prior to letting contracts for or proceeding with the construction of any new school or any additions to an existing school. The State Superintendent will, upon receipt of such proposals, take appropriate action on said proposals as required by the March 22, 1967, decree entered in *Lee, et al.* v. *Macon County Board of Education, et al.*, 267 F. Supp. 458, 470-472, 480-481.

III. Transportation

The school board will adopt nondiscriminatory bus routes and criteria governing the availability of bus transportation to students. Race will not be a basis for assigning students to school buses, and overlapping and duplicative bus routes based on race will be eliminated. By June 1, 1968, the school board will file with the Court the criteria it has adopted and a map or maps of bus routes for the 1968-69 school year. Along with the map, the school board will file a report indicating for each bus in its system, the number of students by race that the bus is expected to transport, the capacity of the bus, the number of miles the bus is expected to travel one way, and the school or schools the bus will serve. The board will serve the United States, as amicus curiae, with copies of the criteria, the report, and the map or maps.

IV. Jefferson Davis High School, Peter Crump School, and Southlawn School

The school board will take affirmative action to eradicate the effect of the efforts it and its employees have made to

create the impression throughout the school system that
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Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School are to be used primarily by white students. The action will include, but not be limited to, the following steps:

A. *Letter to Eligible Students.*

By March 1, 1968, the school board will send to every student presently enrolled in grades 9, 10 and 11 in the public schools of Montgomery County a letter such as that set forth in Attachment A to this supplementary plan. A copy of the information sheet on choice forms and spring football practice, such as has heretofore been distributed to white students and parents, will be enclosed with each letter addressed to a male student.

B. *Visits to Schools.*

In the company of either the principal or a coach previously assigned to Jefferson Davis High School, that school's new coach will visit each high school and junior high school in Montgomery. They will inform the male students in grades 9, 10 and 11 at those schools of the rules concerning their eligibility to participate in athletics at Jefferson Davis High School. They will also inform the athletes when and where spring football practice is to begin for the new high school and of the procedures they should follow in order to participate. They will also make themselves available to answer any questions these students may have about Jefferson Davis High School.

C. *Transportation.*

The school board will, on the choice forms, offer to provide transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School, until further order of this Court. The choice forms will indicate that transportation is to be provided to those schools. The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee or Lanier High School, in the absence of compelling circumstances approved by the Court on the school board's motion.

D. *Honoring Choices.*

The school board will honor the choice of each Negro student who chooses to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the Court on the school board's motion.

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V. Reports

The school board will report to the Court every three months, beginning March 15, 1968, the steps taken to comply with the desegregation plan ordered into effect June 1, 1967, and with this supplementary plan. Plaintiffs and the United States will be served with copies of the reports.

A. *Reports Previously Ordered.*

The school board will include in reports filed each June 15 the "report on choice period" and "report on faculty

assignments" described in Part VII of the plan ordered June 1, 1967. The report after school opening, also described in Part VII of the 1967 order, will become part of the reports filed each September 15.

B. *Faculty.*

1. *New teachers.* Each report filed will list each new teacher hired during the preceding three months and give his race and the school to which he is assigned.

2. *Substitute teachers.* Each report will list the number of days taught by substitute teachers, by race and by school, during the preceding three months, with the exception that the report filed March 15, 1968, will give this information only from the date of the order to which this supplementary plan is attached.

3. *Student teachers.* Each report will show by race the number of student teachers assigned during the preceding three months to each school having student teachers.

4. *Night schools.* Commencing June 15, 1968, each report will show by race the number of faculty and staff members assigned to the night program of each school having a night program.

C. *Transportation.*

Each report filed each year on September 15 will show, for each school bus, the number of students transported by race, the capacity of the bus, the number of miles it travels one way, and the school or schools it serves.

D. *Jefferson Davis High School and Other New Schools.*

The reports of March 15, 1968, June 15, 1968, and September 15, 1968 will show the steps (COPY ILLEGIBLE—PLEASE SUPPLY) to comply with Part V of this supplementary plan.

ATTACHMENT A

Montgomery Public Schools

Date

Dear Student:

We are sending you this letter to inform you that you are eligible to attend Jefferson Davis High School if you choose to do so. The choice period for Montgomery County schools begins March 1, 1968, and you or your parents will be receiving a choice form within the next few days.

Jefferson Davis High School is a new school in southeast Montgomery, to be opened in the fall of 1968. A senior high school only, it will have grades ten through twelve. Bus transportation to the school will be available to students who live outside the City of Montgomery and more than two miles from the school provided the student exercising such choice lives nearer Jefferson Davis than either Lee or Lanier High School.

We are in the process of forming a faculty and staff for the new school now. It will include a substantial number of persons of both races.

All students will be welcome to participate in all extra-curricular activities, including athletics and band, on the same basis and without regard to race. Spring football practice is scheduled to begin March 4, 1968, at Cloverdale Junior High School. Two days before that, Saturday, March 2, at 9:30 a.m., prospective players will be fitted for equipment at the Cloverdale Community Center in Montgomery. All athletes who choose to attend Jefferson

Davis High School are welcomed to participate. You should read the enclosed instruction sheet (sent only to male students) if you are interested.

Sincerely,

Superintendent
Montgomery Public Schools

Enclosure

Writ of Injunction Dated February 24, 1968

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To the Above-Named Defendants and Each of Them:

TAKE NOTICE that you and each of you, your agents, officers, employees and successors, and all those in active concert or participation with you, who shall receive notice of this order, be and you are hereby ORDERED and ENJOINED as more fully set out in the Memorandum Opinion of this Honorable Court made and entered in this cause on this date, a copy of which is herewith served upon each of you.

This writ of injunction is issued in accordance with said Memorandum Opinion.

WITNESS my hand and the seal of this Court at Montgomery, Alabama, on this the 24th day of February, 1968.

R. C. DOBSON
Clerk of the United States
District Court for the
Middle District of Alabama

Notice of Appeal

(Filed February 27, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Notice is hereby given that the Montgomery County Board of Education, James W. Rutland, Fred Bear, Dr. J. Edward Walker, Isabelle Thomasson, Dr. Robert Parker and Walter T. McKee, defendants above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the middle district of Alabama, Northern Division, entered in this action on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date.

DONE, this the 27th day of February, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellant-Defendants

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Bond for Costs on Appeal

(Filed February 28, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson and Dr. Robert Parker, Members of the Montgomery County Board of Education and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, as principals, having filed notice of appeal from the injunction and order of this Court entered February 24, 1968, to the United States Court of Appeals for the Fifth Circuit, herewith deposits in the Registry of the Court the sum of Two Hundred Fifty Dollars ($250.00), subject to the orders of the Court for security that said appellants shall prosecute their said appeal to effect; and that said appellants shall pay to plaintiffs-appellees all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

Dated this 28th day of February, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellants-Defendants

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Motion for Suspension and Stay of Injunction and Order During Pendency of Appeal

(Filed February 28, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon the proceedings heretofore had herein, motions, answers and other papers filed herein, and the affidavit of V. H. Robison sworn to February 28, 1968, as attached hereto and made a part hereof, the defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson, and Dr. Robert Parker, Members of the Montgomery County Board of Education, and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, move the Court for an Order suspending the injunction and order heretofore entered against these defendants, pending the hearing and determination of these defendants' appeal to the United States Court of Appeals for the Fifth Circuit from the Order, Judgment and Decree of this Honorable Court entered February 24, 1968, and for such other and further relief as to the Court may seem proper.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellants-Defendants

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Certificate of Service (omitted in printing)

Affidavit in Support of Motion for Stay Pending Appeal

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Before me, Connie J. Knight, this day personally appeared V. H. Robison, who is known to me and who, being by me first duly sworn, doth depose and say as follows:

1. I am, as the attorney of record for the defendants Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson, and Dr. Robert Parker, Members of the Montgomery County Board of Education, and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, fully familiar with the facts and proceedings in this action. I submit this affidavit in support of the annexed motion.

2. The order and injunction as issued by the United States District Court for the Middle District of Alabama on February 24, 1968 contains far reaching pronouncements of legal principles heretofore unprecedented in this District and this Circuit. These said pronouncements specifically include the order and directive to the above-named defendants to assign and to transfer faculty members, student teachers and substitute teachers in all schools in this system or from one school to another, according to a

fixed ratio based on race. The said order and injunction
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additionally include requirements and directives to these defendants that they give an affirmative racial preference to students for school attendance regardless of the proximity of the residence of the student to the school involved.

The said order further requires these defendants to notify all students throughout Montgomery County that they are eligible to attend the Jefferson Davis High School when such notice is inconsistent with other provisions of the said order and inconsistent with prior orders of the Court.

3. The above provisions of the Court's order dated February 24, 1968, as well as the compulsory transportation provisions thereof, the necessity for which not being supported by the evidence or the applicable law, will cause extensive student and procedural confusion and will disrupt orderly school administration in this County, and would result in students living in close proximity to the Jefferson Davis High School being subject to denial of admittance based on race, in preference to a student living as far as 25 or 30 miles away, and would subject the student living within 100 yards of the school to have to travel to another school more than two miles away.

4. On the 27th day of February, 1968, these defendants filed their notice of appeal from the said Order of February 24, 1968 to the United States Court of Appeals for the Fifth Circuit. The usual bond for costs on appeal was filed on February 28, 1968. A copy of this said notice of appeal, together with a copy of the said bond for costs on appeal are attached hereto as Exhibits 1 and 2.

5. It is respectfully submitted that during the pendency of this appeal, the injunctive provisions as set forth above and as contained in the order of the Court dated February 24, 1968, should be stayed, particularly in light of the many important legal questions and unresolved issues therein presented. In deponent's opinion, the decision as contained in the said order is in error, and is in conflict with the mandates of the Constitution of the United States, the Supreme Court of the United States, and the Fifth

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Circuit Court of Appeals. Because of the serious issues and important questions of law involved in this appeal, these defendants ought not to be subjected to the drastic effect of the said injunction pending appeal and ought not to be subjected pending appeal to the unreasonable administrative burdens resulting from the said injunction.

6. It is the opinion of your deponent that to subject this school system to the provisions of the injunction and order of the Court dated February 24, 1968, pending appeal, would result in irreparable injury to the school system of Montgomery County, even upon a reversal of the order.

WHEREFORE, for all of the foregoing reasons, these defendants respectfully pray that the provisions of the injunction and order of the Court dated February 24, 1968 be stayed during the pendency of this appeal.

V. H. ROBISON

(Sworn to February 28, 1968)

EXHIBIT 1 ANNEXED TO AFFIDAVIT

Notice of Appeal

Notice is hereby given that the Montgomery County Board of Education, James W. Rutland, Fred Bear, Dr. J. Edward Walker, Isabelle Thomasson, Dr. Robert Parker and Walter T. McKee, defendants above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the middle district of Alabama, Northern Division, entered in this action on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date.

Done, this the 27th day of February, 1968.

Hill, Robison, Belser and Phelps
Attorneys for Appellant-Defendants

EXHIBIT 2 ANNEXED TO AFFIDAVIT

Bond for Costs on Appeal

The defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson and Dr. Robert Parker, Members of the Montgomery County Board of Education and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, as principals, having filed notice of appeal from the injunction and order of this Court entered February 24, 1968, to the United States Court of Appeals for the Fifth Circuit, herewith deposits in the Registry of the Court the sum of Two Hundred Fifty Dollars ($250.00), subject to the orders of the Court for security that said appellants shall prosecute their said appeal to effect; and that said appellants shall pay to plaintiffs-appellees all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

Dated this 28th day of February, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellant-Defendants

Order Amending Order and Injunction of February 24, 1968

(Filed March 2, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon consideration of the defendants' motion to stay the order and injunction made and entered herein on February 24, 1968, and the arguments in support thereof and in opposition thereto, it is considered appropriate, in order to accomplish the intent and purpose of this Court and in order to clarify the order and injunction in certain specific respects, to amend the order made and entered February 24, 1968.

Accordingly, it is Ordered that:

(1) That portion of Part IV, C, reading:

> The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee or Lanier High School, in the absence of compelling circumstances approved by the Court on the school board's motion,

is amended to read:

> The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee, Lanier, or Montgomery County High School, in the absence of compelling circumstances approved by the Court on the school board's motion.

(2) That portion of Part I, D, reading:

> Commencing March 1, 1968, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute
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>
> teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester,

is amended to read:

> Commencing in September, 1968, with the 1968-69 school year, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

(3) That Part I, E, reading:

> Commencing March 1, 1968, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system,

is amended to read:

> Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

(4) That portion of "Attachment A" to the injunction wherein it is stated:

> We are sending you this letter to inform you that you are eligible to attend Jefferson Davis High School if you choose to do so, -

is amended to read:

> We are sending you this letter to inform you that you are eligible to choose to attend Jefferson Davis High School if you desire to do so.

(5) That portion of Part I, B, reading:

> (1) *1968-69.* At every school with fewer than 12 teachers, the board will have at least two full-time teachers whose race is different from the race of the majority of the faculty and staff members at the school,

is amended to read:

> (1) *1968-69.* At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

Done, this the 2nd day of March, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

Order

(Filed March 2, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The motion of the Montgomery County Board of Education filed herein on February 28, 1968, seeking an order suspending and staying the order and injunction of this Court made and entered in this case on February 24, 1968, is now presented. The submission is upon the motion, the record and the arguments of counsel.

From 1954—when the Supreme Court of the United States put the Montgomery County School Board and other school boards throughout this country on notice that they could not continue under the law to operate a dual school system based on color—until this Court found it necessary to enter an order on July 31, 1964, requiring commencement of the desegregation of the public schools in Montgomery County, Alabama, the Montgomery County Board of Education had taken no steps and had made no plans whatsoever to comply with the law of this land in the area of school desegregation. Even though ten years had passed when this matter came on for a hearing in 1964, the Montgomery County Board of Education was allowed, by this Court, to proceed with desegregation gradually, for the reason that it was realized that desegregation of the public schools cut across the social fabric of this community and that there would be both administrative and other prac-

tical problems for the board to cope with in order to comply with the law. In the first phase of accomplishing desegregation of the public schools—that is, the adoption of a plan, which has been referred to as "paper compliance"—the Board of Education proceeded with the minimum required by the Court, but in a manner that was acceptable. The

next stage of the desegregation process—the token desegregation of the schools and faculty—was also accomplished by the Board in an acceptable manner. However, we have reached the point where we must pass "tokenism," and the order that was entered in this case on February 24, 1968, is designed to accomplish this purpose. It was not designed to and was not intended to accomplish, and, if complied with, will not require more than the Supreme Court of the United States and the other appellate courts have held must be accomplished in order to desegregate a public school system.

The Board of Education in its motion to suspend and stay the order of this Court pending appeals—which may take a year or longer—emphasizes certain particular features of this Court's order of February 24, 1968. In some instances the emphasis is misplaced, and certainly that part of the motion which states that the February 24, 1968, order "contains far reaching pronouncements of legal principles heretofore unprecedented in this District and this Circuit" is incorrect—both in law and in fact. The Montgomery board complains about that part of the order requiring assignment and transfer of faculty members, student teachers and substitute teachers according to a fixed ratio based on race. While this Court did state in its order of February 24, 1968, that the "ultimate objective" in faculty desegregation should be, because of the ratio of white to

Negro faculty members in the school system, approximately 3 to 2, no schedule was set up to accomplish this "ultimate objective." The United States requested that a definite schedule be outlined for this accomplishment. However, gradualism has been found to work quite successfully in the past in this type case and particularly with the Montgomery County Board of Education, and gradualism is contemplated by this Court in accomplishing this "ultimate objective." What is actually required in the area of faculty desegregation in the high schools for the 1968-69 school year is very little—if any—more than the testimony reflects the school board planned without an additional court order. For instance, the school board presented testimony by Mr. Jack D. Rutland, the school principal for the new Jefferson Davis High School, to the effect that he contemplated hiring approximately 35 teachers, 7 of whom were to be Negroes. Thus, what is now ordered in the way of faculty desegregation as far as the Jefferson Davis High School is concerned is not as much as this Court was led to believe by the board's testimony would be accomplished by the board for the 1968-69 school year without any additional court order. This also applies to that part of the Court order as now amended requiring faculty desegregation for the other schools in the

system. Thus, in the area of faculty desegregation, nothing more is required of the Montgomery County School Board by the order of February 24, 1968, than the law requires as a minimum at this stage of the desegregation process and very little, if any, is required more than the school board, by its testimony, advised this Court it was going to do anyway.

The school board's complaint that the "ratio" requirement is unprecedented is inaccurate. In *Board of Educa-*

tion of Oklahoma City Public Schools v. *Dowell*, 375 F. 2d 158, 164 (10th Cir. 1967), it was observed that:

> Among the specific recommendations found in the report and *embraced by the trial court's order* were:
>
> • • •
>
> (4) Desegregation of all faculty personnel so that by *1970* the faculty ratio of whites to non-whites in each school will be the same as the faculty ratio of whites to non-whites in the entire school system, subject to a reasonable tolerance of approximately 10%. [Emphasis added, footnote omitted.]

The Fifth Circuit has not addressed itself to the means to be employed to fully achieve faculty desegregation. It has approved "racial criteria" in assignments "in fashioning an appropriate remedy to undo past discrimination." *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 892 (5th Cir. 1967). The opinion in that case recognized that requiring a percentage ratio of teachers in the system was one method of meeting the problem:

> We anticipate that when district courts and this Court have gained more experience with faculty integration, the Court will be able to set forth standards more specifically than they are set forth in the decrees in the instant case. 372 F. 2d at 894.

In meeting this problem of faculty desegregation, other district courts have found it necessary to spell out in specific numbers the degree of faculty desegregation required where the local school boards have not proceeded with "deliberate speed." See *Coppedge* v. *Franklin County Board of Education*, 273 F. Supp. 289 (E.D. N.C. 1967); *Kier* v. *County School Board*, 249 F. Supp. 239 (W.D. Va. 1966).

The school board also complains as to that feature of the order relating to transportation. The order as now amended does not require the school board to do anything in the area of transportation of students that is not already required of practically every school in the State of Alabama and particularly each of the 99 schools subject to the order of the three-judge court in *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458. As a matter of fact, that part of the order of this Court of February 24, 1968, that relates to transportation is almost a duplicate of what is required of other schools throughout the State of Alabama in the area of transportation.

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That particular feature of this Court's order of February 24, 1968, requiring transportation to the Jefferson Davis High School only requires transportation on the same basis that the school board is already providing it to Lee and Lanier High Schools. As was emphasized in the opinion and order of February 24, 1968, the Montgomery County School Board, according to the preponderance of the evidence, has set out to continue to operate—other than allowing token desegregation—a dual school system based upon race or color. The evidence clearly reflects that the manner in which this is to be accomplished is by the construction of schools with a limited capacity in virtually all-white neighborhoods. These capacities are not projected with the community growth in mind. The recent trend by the Montgomery board is to limit the capacity of these new schools to the present student population in these white enclaves. To perfect this plan, the school board has declared—before any choices are filed—that no transportation will be provided to the new Jefferson Davis High School, but that

transportation will be provided to every other high school in the county. The announced justification for this is that the school will be filled to capacity without transporting any students. Thus, the board will, because of the location of these new schools (Jefferson Davis, Southlawn Elementary and Peter Crump Elementary), when it refuses to honor the choices of students who do not live in these white neighborhoods, be successful in operating exclusively white schools for white communities. At the same time the board has been doing this, it has been enlarging, through expansion programs, the Negro schools; these expansion programs are based upon the projected student growth. Through this means, the "freedom-of-choice plan" will not accomplish desegregation of the school system in Montgomery County, Alabama. If this system is permitted, the Montgomery board will be using the freedom-of-choice plan for part of the school system and the neighborhood school plan for another part of the system. The freedom-of-choice plan will be operating for schools such as Lee High, Lanier High, Capitol Heights, Jr. High, Goodwyn Jr. High and others, and these schools will be desegregated. The Jefferson Davis High, Southlawn Elementary and Peter Crump Elementary Schools will be operated on a segregated basis —solely for the students residing in these exclusively white neighborhoods. The law will simply not permit the operation of such a system.

Furthermore, the evidence in this case is clear that the Jefferson Davis High School has been constructed in an exclusively white, predominantly high income-tax bracket community. To allow the Board of Education of Montgomery County, Alabama, to succeed in such a plan will

not only be to discriminate against the Negro children who

might elect to attend Jefferson Davis High School, but will also, according to some theories, discriminate against white children who attend desegregated schools.

This Court has ordered no "busing" of students other than requiring the Board of Education to provide exactly the same type transportation and upon exactly the same basis as that already provided by the board to students attending Lee and Lanier High Schools.

The last aspect of this Court's order that the board by its motion considers innovative to the point that the order should be stayed pending appeal is that pertaining to honoring the choices of Negro students who choose to attend Jefferson Davis High School during the 1968-69 school year. As was emphasized in the February 24, 1968, order, the school board, through its agents and by its own practices, had set about to create and had created the impression throughout the system that the new air-conditioned Jefferson Davis High School was to be an exclusively white school. No reasonable conclusion could be reached other than that this was for the purpose of deterring any Negro student in the system from choosing the Jefferson Davis school for the 1968-69 school year. The impression had been created that the school was not available—even though the Montgomery Board of Education is theoretically operating under a freedom-of-choice plan—for anyone except the 850 students of the exclusively white, high-income group that comprise the community where the new school is located. Fairness and justice requires that something be done to counteract this aggravated type of discrimination. The order emphasizes that this feature is a temporary measure—presently designed only to operate during the 1968-69 school year. The order further emphasizes that the choices of Negro students electing to attend Jefferson Davis High

School during the 1968-69 school year shall be honored *in the absence of compelling circumstances to be approved by this Court* on the school board's motion. As to this feature of the order—as it has throughout this litigation—reasonableness will govern the Court's action.

When motions to stay orders and injunctions are filed by litigants in any type of litigation, normal judicial procedure requires—as was done in this case—that the motion to stay be presented to the judge entering the order sought stayed. This invariably places the judge in the position of being required to review and appraise his own order; that is the situation now presented. This Court firmly believes that each and every provision and requirement in the order and injunction made and entered in this case on February 24, 1968, is the minimum the applicable law will

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allow under the peculiar facts and circumstances presented and that each and every feature of the order and injunction entered in this case on February 24, 1968, is not only authorized but required by the applicable law. However, it is not felt that any of the litigants will be prejudiced if certain features of the order to which the Montgomery County Board of Education most strenuously objects are stayed for a limited time so as to afford the Board of Education a reasonable time to secure appellate review of these features of the order and injunction.

The feature with regard to transportation *generally* (which is, as has been emphasized, required of practically every other school in the State of Alabama), the features as now amended with regard to the desegregation of the substitute teacher program, the student teacher program and the night school program, will not be stayed. These do not even approach new or novel areas. That part of the order requiring the approval of the State Superintendent

of Education prior to letting new contracts or expanding existing schools is not novel and will not be stayed. Those portions regarding reports to this Court are not novel and are not to be stayed. That provision of the injunction as now amended relating to faculty and staff set out in Part I, B, will be stayed for a limited period pending an appeal. That provision of the order set out in Part IV, C, relating to transportation to the Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School, will be stayed for a limited time pending appeal. That provision of the order set out in Part IV, D, relating to the honoring of the choices of Negro students who elect to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the court on the school board's motion, will be stayed for a limited time pending appeal. The remainder of the order, as stated above, will not be stayed.

There is a provision authorizing accelerated appeals where time is of the essence. This Court considers that time is of the essence as to these features of the injunction now being stayed pending this appeal. There is no reason why the school board, through its attorneys, cannot secure an accelerated hearing of this matter before a panel of the United States Court of Appeals for the Fifth Circuit. In this connection, both the board's and government's attorneys have orally assured this Court that they will seek to expedite the appeal of this case and will, by reason of the time limitations involved, request the Court of Appeals to accelerate the hearing and submission of the case. This

will enable these features of the order to be reviewed by the appellate court prior to the commencement of the 1968-69 school year and will also, in the event one or more of

the provisions of the February 24, 1968, order are affirmed, enable the school board to put them into effect for the 1968-69 school year. This procedure will allow appellate review of the order before it is scheduled to be effective and will also keep the Negro plaintiffs from being prejudiced by any further undue delay. In the opinion of this Court, five months will be ample time to afford the school board, through its attorneys, an opportunity to secure an appellate review of these matters. Therefore, a stay order as to these features herein enumerated will be entered and the order of this Court of February 24, 1968, as to these enumerated features will not be effective until August 1, 1968. Unless the school board secures an appellate review prior to that date, this stay now being entered will expire on that date. The Clerk of this Court and the official court reporter for this district stand ready to assist the school board in the preparation of the record in this case so as to facilitate the presentation of the matter to the appellate court.

Accordingly, it is the ORDER, JUDGMENT and DECREE of this Court that the effective date for complying with, and making plans to comply with, those provisions in the injunction made and entered herein on February 24, 1968, set out in Part I, B (faculty desegregation), Part IV, C (transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School), and Part IV, D (the honoring of choices of Negro students who choose to attend Jefferson Davis High School during the 1968-69 school year) are hereby stayed until August 1, 1968.

Done, this the 2nd day of March, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

Motion for Leave to Amend Notice of Appeal

(Filed March 6, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come the Montgomery County Board of Education; James W. Rutland, Jr.; Fred Bear; George A. Dozier; Dr. J. Edward Walker; Isabelle B. Thomasson and Dr. Robert Parker, Members of the Board of Education; and Walter McKee, Superintendent of Education of Montgomery County, Alabama, and move this Honorable Court for leave to amend the notice of appeal heretofore filed on February 27, 1968, so that said notice of appeal shall read as follows:

> "Notice is hereby given that the Montgomery County Board of Education; James W. Rutland, Jr.; Fred Bear; George A. Dozier; Dr. J. Edward Walker; Isabelle B. Thomasson and Dr. Robert Parker, Members of the Board of Education; and Walter McKee, Superintendent of Education of Montgomery County, Alabama, appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the Middle District of Alabama, Northern Division, entered on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date and as amended on the second day of March, 1968."

DONE, this the 6th day of March, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendants

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Order Allowing Amendment of Notice of Appeal

(Filed March 6, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The motion to amend the notice of appeal heretofore filed by the defendants having been considered by the Court, and the Court being of the opinion that the motion should be granted, it is hereby

ORDERED that the motion for leave to amend the notice of appeal herein filed by the defendants be and the same is hereby granted.

DONE this 6th day of March, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

Amended Notice of Appeal

(Filed March 6, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

With leave of the District Court being first had and obtained, the defendants herein do hereby amend the notice of appeal heretofore filed herein to read as follows:

"Notice is hereby given that the Montgomery County Board of Education; James W. Rutland, Jr.; Fred Bear; George A. Dozier; Dr. J. Edward Walker; Isabelle B. Thomasson and Dr. Robert Parker, Members of the Board of Education; and Walter McKee, Superintendent of Education of Montgomery County, Alabama, appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the Middle District of Alabama, Northern Division, entered on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date and as amended on the second day of March, 1968."

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendants

Defendants' Statement of Points

(Filed March 6, 1968)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. .....

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR.; FRED BEAR; DR. J. EDWARD WALKER; ISABELLE B. THOMASSON; and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER T. McKEE, Superintendent of Education of Montgomery County, Alabama,

Appellants,

v.

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends; BATHSHEBA L. THOMPSON, JOHN W. THOMPSON, JAMES G. THOMPSON, and PHILLIP L. THOMPSON, minors, by BISHOP S. THOMPSON, SR., and LOIS E. THOMPSON, their parents and next friends,

Appellees,

UNITED STATES OF AMERICA,

Amicus Curiae.

The defendant-appellants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr.

J. Edward Walker, Isabelle B. Thomasson, and Dr. Robert Parker, Members of the Montgomery County Board of Education, and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, state the following points on which they intend to rely on their appeal from the order and judgment and decree as amended, granting an injunction herein:

1. The issuance of the order, judgment and decree as amended granting the injunction herein was contrary to the evidence.

2. The issuance of the order, judgment and decree as amended granting the injunction herein was contrary to the law.

3. The Court erred in its order and directive that the Montgomery County Board of Education assign and transfer faculty members, student teachers and substitute teachers throughout all schools in the Montgomery County School System and from one such school to another, according to a fixed ratio based on race.

4. The order and directive by the Court that the Montgomery County Board of Education assign and transfer faculty members, student teachers and substitute teachers throughout all schools in the Montgomery County system according to a fixed ratio based on race is contrary to the law.

5. The Court erred in its order and directive that the Montgomery County Board of Education give an affirmative racial preference to students for attendance in the

Jefferson Davis High School regardless of proximity of the residence of the student to the school involved.

6. The Court erred in its order and directive that the Montgomery County Board of Education provide transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School.

7. There is no substantial evidence to support a finding or holding that these defendant appellants have not at all times complied with all orders of this Court.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendant-Appellants

Certificate of Service (omitted in printing).

Comments at Conclusion of Hearing of May 5, 1965

(Filed May 5, 1965)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 2072-N.

ARLAM CARR, JR., a minor, by ARLAM CARR and JOHNNIE CARR, his parents and next friends; and BATHSHEBA L. THOMPSON, JOHN W. THOMPSON, JAMES G. THOMPSON, and PHILLIP L. THOMPSON, minors, by BISHOP S. THOMPSON, SR. and LOIS E. THOMPSON, their parents and next friends,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR., FRED BEAR, GEORGE C. STARKE, GEORGE A. DOZIER, DR. J. EDWARD WALKER, ISABELLE B. THOMASSON and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER McKEE, Superintendent of Education of Montgomery County.

(The above-styled cause coming on for Hearing Upon Objections to Proposed Desegregation Plan, at Montgomery, Alabama, May 5, 1965, before Hon. Frank M. Johnson, Jr., Judge, a hearing was had, at the conclusion of which the following was dictated by the Court:)

The Court: All right, Mr. Reporter, will you type this for the lawyers, please. Particularly Mr. Sutin, as amicus; I want you to prepare a court order for me along these lines:

The injunction that was issued by this Court on July 31, 1964, of course, remains in full force and effect, except to the extent that it may be hereinafter formally modified by a court order, and what I am saying now is, of course, tentative; it will be formalized by an order to be prepared by Mr. Sutin along these lines and presented to you gentlemen prior to the date it is to be presented to me, and I will confer with you at the time it is presented.

Under the plan as adopted pursuant to the order of the Court of July 31, 1964, as of September, '64, grades one, ten, eleven, and twelve were desegregated under this "transfer freedom of choice" plan. The Board now proposes to the Court that in addition to grades one, ten, eleven, and twelve, they open and desegregate grades two

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and nine, effective September of this year. This Court is going to, with some minor modifications, approve this plan as proposed by the Montgomery Board. One modification is, in addition to grades two and nine that are to be desegregated and transfers accepted, effective September, '65, that the plan include grade seven. That means that as of September, '65, the Board proposes to desegregate one, two, nine, ten, eleven, and twelve; the Court approves that, and in addition orders that grade seven be desegregated.

Now, this "notice" provision in the plan isn't approved. I think the time is too short. There should be a thirty-day period for these parents to make application for transfer.

And notice should be given to all Negro parents of students in the County System in lay language by letter from the Board, on or before June 10, as to their right to transfer as to grades seven, nine through twelve, and one and two. They should be advised as to their freedom of choice and their right to apply, in nonlegalistic language. This should be augmented and supplemented; that is, the letter to be sent not later than June 10 should be augmented and supplemented by two newspaper ads—at least two; you can use more if you want to—published on June 20 and June 27, or some other dates that may suit the convenience of the Board, but along about that time. Applications for transfer should be taken during the thirty-day period, and not during just a fifteen-day period; applications should be taken from June 21 through July 20. That will give the School Board plenty of time. In these notices that are in the paper and sent out by mail, the parents should be advised as to the school district that they are in, that they have a preference, if they desire to exercise that preference by making application for their child or children to attend schools formerly predominantly attended by members of the opposite race they can do so.

Now, I understand the objections to applications being made to the office of the Superintendent of Education, but I understand the reason for it during this period of transition. I don't envision that the plan, except during this pe-

riod of transition, this year and possibly next year, will authorize that. But I think to require both parties to come is an onus and undue burden, so the plan should just require one of the parents to make the application.

Mr. Gray: Excuse me, your honor; is that one to physically pick it up and bring it back?

The Court: Yes; yes; yes, but not both. And the application can be made only by one parent, and not by both; if you run into any trouble like you say you had in one instance last year, I will resolve it for you.

The order should direct the defendants to report to this Court on or before August 10, 1965, as to the action taken on each application for transfer and assignment. The defendants should be ordered to file their plan for completion of the desegregated system, including abolition of the dual school or biracial school system, which of course still exists. I am not naive enough to believe that desegregation of certain grades by transfer, such as we are doing here, is full compliance with what the law eventually envisions and requires, but I recognize that it is a transition period, and I think that this is reasonable for the facts in this case and the circumstances existing in this particular school district at this time. So the Board should file with the Court its plan for completion of the desegregation of the dual school and biracial school system on or before January 14 of 1966.

The amicus, United States, should prepare this order and present it to me, together with counsel for the plaintiffs and counsel for the defendants, not later than May 17. Present it to those attorneys prior to the time, and consult with them concerning the preparation of it, particularly the notices, the dates that they are to be given. That means that the letter notice, then, for the thirty-day period the Board will be taking applications for transfers should be sent out not later than June 10; that the newspaper notices

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should be made on or about June 20 and on or about June 27; that the period for taking applications on the part of the Board for these transfers to grades seven,

nine, ten, eleven, twelve, one, and two should be from June 21 through July 20; the report to the Court for the Board on August 10; the complete plan for desegregation filed on or before January 14, 1966; this order presented on or before May 17 of this year.

Let me say this; that I recognize the problems that exist in this particular school district, and I think the plaintiffs recognize them, and both parties in this law suit have, up to this point, demonstrated to me an awareness of their responsibilities, not only to their clients, but to the school system; and I want to congratulate and compliment both the plaintiffs and particularly the School Board, Montgomery County School Board, for its efforts as demonstrated last fall in complying with the law as that law was reflected in the order of this Court. If you have any questions, gentlemen, I will be available.

Mr. Phelps: Judge, could I ask one question at this time? This is something that we could start work on.

The Court: All right.

Mr. Phelps: Would the court be receptive to the letter being sent to the parents by the report cards?

The Court: Any way you get it to them; I want Mr. Sutin to help in the preparation of that letter, to make sure that it explains exactly what their rights are in nonlegalistic terms.

Mr. Phelps: All right, sir.

Mr. Robison: That would be May 27, I believe.

Mr. Walter McKee: 27th or 28th.

The Court: You can accelerate the schedule if you wish, or if it is convenient, such as getting it to them a little later, to send the report cards, we will make it convenient, we will change the dates; sure.

Mr. Robison: Save the postage and the other things.

The Court: Absolutely; absolutely. You are going to

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have a problem, now, as to how to advise your first graders, those coming in the first grade; I take it you have some method of knowing who they are.

Mr. Robison: No, sir.

Mr. Walter McKee: No, sir.

The Court: Well, you will have to do that, then, strictly by publication—

Mr. Robison: We have no way of knowing.

The Court: —unless you know of some way to know who they are. Any other thing you think you might need to raise at this time?

Mr. Gray: Your honor, it is not on the plan, itself; it is on the reproduction of one of the Exhibits that we are supposed to reproduce. I am wondering whether or not—I am going to have to get them Xeroxed, and I need permission from the Court to be able to take them to get them Xeroxed for that purpose.

The Court: Well, I have no objection to you withdrawing them; if counsel wants to go with you, give them notice as to when you are going to take them so that they can take them with you, and you can sign them out from the Clerk. It may be, in view of this action, you will want to withdraw them and let them stay in custody of Mr. McKee; I don't know, that is up to you.

Mr. Gray: Well, your honor, what I think I would like to do at this time is to withdraw them, with the understanding that if we need them later, then we could have copies.

The Court: Why don't we do it that way?

Mr. Robison: That will be agreeable with us.

The Court: Then by agreement, let the Clerk return them to Mr. McKee, with the understanding that if the plaintiffs want them back—

Mr. Gray: Yes, sir.

The Court: —then you will make application directly to the lawyers, and they will get them to you for copying.

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Mr. Gray: Thank you.

The Court: All right. All right, gentlemen. Recess court until further ordered.

Court Reporter's Certificate (omitted in printing)

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Memorandum Transcript—Hearing of May 25, 1967

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

(Hearing in above-styled case having been had at Montgomery, Alabama, May 25, 1967, before Hon. Frank M. Johnson, Jr., Judge, the following comments were made by the Court at the conclusion of the hearing:)

The Court: All right, gentlemen; I will take this matter, then, under consideration. And, since there is very little controversy between you on it, you can expect an order to be entered substantially like that proposed; there will be a few changes.

I would like to say this to you here in the presence of the plaintiffs' and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as professional educators and not as politicians. This present attitude is demonstrated

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here at this time; this past conduct on the part of these officials has, without any doubt, inured to the benefit of the students, regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have ac-

complished this largely through—or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar operations, is a considerable feat, for which this community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate.

I will enter a decree in this case.

Mr. Vaughan H. Robison: Thank you.

Court Reporter's Certificate (omitted in printing)

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Transcript of Hearing—September 5, 1967

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Before Hon. Frank M. Johnson, Jr., Judge, at Montgomery, Alabama, September 5, 1967.

Appearances:

For the Plaintiffs:

Gray & Seay (Fred D. Gray).

For the Defendants:

Hill, Robison, Belser & Phelps
(Vaughan H. Robison and
Joseph D. Phelps).

For the United States:

Reuben Ortenberg and
Alexander Ross.

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(The above case coming on for hearing at Montgomery, Alabama, September 5, 1967, before Hon. Frank M. Johnson, Jr., Judge, the following proceedings were had:)

The Court: Let's get to this next hearing, this Arlam Carr and Montgomery County; do you have any evidence in that case to take this morning? Mr. Gray isn't here, and it isn't set until eleven this morning.

Mr. Robison: That's right, sir; and I understand Mr. Reuben Ortenberg, from the Department of Justice, is in that case; having filed a motion, we would like a conference with your honor, if the court please, prior to the eleven o'clock hearing, if agreeable with all counsel and the Department of Justice.

The Court: All right. Well, why don't we set that conference for ten thirty this morning.

Mr. Robison: Fine.

The Court: You get in touch with Mr. Ortenberg, and you can get in touch with Mr. Gray, if he represents the —if he is handling the case for the plaintiffs.

Mr. Solomon S. Seay, Jr.: All right, sir.

The Court: All right; I will just keep these, then, for the time being. We will recess until further order.

(At which time a recess was had, and at 11:06 a.m., the case was called and the following proceedings were had:)

The Court: All right; Arlam Carr and others against Montgomery County Board and others, number 2072-N, —454— here on the motion filed for further relief by the United States and by the plaintiffs. Ready to proceed?

Mr. Ortenberg: Ready, your honor.

Mr. Robison: If the court please, we likewise have a motion, as your honor knows, before the court asking that the relief be denied, and as one of the grounds, setting forth it is not timely filed. The plaintiffs in this case didn't even join with the United States of America until the 29th day of August, and the amicus curiae filed it on the 17th day of August, some two months after our report was filed and approximately two weeks before school opened. As a matter of fact, today we are having faculty

and principal meetings, and we have asked that the motion be dismissed on that ground.

The Court: Well, if that is to be interpreted as a motion to dismiss without any hearing, I will deny it; but I will take in consideration the timing and—when and if I reach the substance of the matter.

Mr. Robison: All right, sir.

The Court: Ask your witnesses to come around.

Mr. Ortenberg: Mr. Walter McKee.

The Clerk: Do you have other witnesses?

Mr. Ortenberg: Yes.

The Court: All your witnesses that are going to testify should be sworn at this time.

Mr. Ortenberg: All persons—Mr. Smith and Mr. Seymore, Mr. Reed. Mr. Garrett.

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The Clerk: All witnesses, please raise your right hand. You and each of you do solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God.

The Court: All right; you want the rule invoked?

Mr. Ortenberg: Yes, your honor.

The Court: All right.

Marshal: This way, please.

Court Crier: Have to use this other room, that is—Grand Jury is in there.

Marshal: Go around on that side.

Mr. Robison: You want Mr. Garrett under the rule, Mr. Ortenberg? He is Assistant-Associate Superintendent.

Mr. Ortenberg: I guess it won't be necessary.

Mr. Robison: Thank you, sir.

WALTER MCKEE, a defendant, called as witness by the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Ortenberg:

Q. Would you state your name, address, and occupation, please, sir? A. Walter McKee, Superintendent of Schools, Montgomery, Alabama.

Q. Mr. McKee, were you served with a subpoena requiring you to bring certain documents to—this morning?

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A. I was.

Q. Do you have those documents with you? A. Yes, sir.

Q. May I have them, please? A. I have—which ones do you want, now, first?

The Court: Well, I directed those be furnished sometime ago.

Mr. Robison: We have, your honor.

The Court: Have you already furnished them?

Mr. Ortenberg: Yes, sir.

The Court: Have you already looked at them?

Mr. Ortenberg: Yes, sir.

The Court: Let's get them out here on the table then.

A. There is the letters.

Q. I will just take all of them. A. This is—

The Court: Have they been marked for identification, Mr. Clerk?

The Clerk: No, sir.

Mr. Ortenberg: Your honor, we were in conference until just before the hearing started. Would

you mark these Government Exhibit 1 for identification, please?

The Clerk: All of them as one?

Mr. Ortenberg: Yes.

The Clerk: Government Exhibit number 1 for

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identification.

The Court: What do they purport to be?

Mr. Ortenberg: Correspondence between the Superintendent or—and Associate Superintendent of Schools and teachers assigned to schools of the—

The Court: Do you have any objection to it?

Mr. Robison: No, sir.

The Court: It will be admitted in evidence, and I will consider it, in connection with your motion and your opposition to it.

Q. Mr. McKee—

The Court: Let me see them.

Q. —do you recall how many—how many teachers were —were tentatively assigned for the 1966-67 school year to teach in schools in which their race is in the minority? A. '67-68 or '6—

Q. No, sir; '66-67? A. My recollection was that there were five each way.

Q. Pardon me, sir? A. My recollection was it was four each way—

Q. Four each way? A. —in '66-67.

Q. And how many are tentatively assigned as regular classroom teachers, fulltime, for the 1967-68 school year? A. There were five employed each way, although in case

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of some of them, they have had to have been re-employed,

because some have resigned since they were accepted, but at the present time, there are five each way.

Q. And of the—of the total of ten who were assigned across racial lines, how many of those had been among the group that was—that were assigned for the 1966-67 school year? A. Well, originally, there were five; there were four of the colored teachers and one of the white teachers; but one of the white teachers has subsequently resigned.

Q. So that at this present time— A. As of the present time, there are four colored teachers that were in the group last year.

Q. So that for the 1967-68 school year, these ten regular classroom teachers include the four of last year plus six additional teachers that—that you have— A. I believe all six of those are new teachers.

Q. Now, of the—of the— A. Of course, we have the three speech teachers that we talked about in addition.

Q. Yes, sir; that would be regular classroom teachers that I am talking about. Now, of the ten teachers who are assigned across racial lines for the 1967-68 school year, and who were reported as such on June—in the June 15 report to this court, have any of those resigned? A. Two or three of the—of the white teachers have, but they have

been replaced.

Q. Were they replaced by other white teachers? A. Yes.

Q. The same number that had been—that had resigned? A. That's right; that's right.

Q. Who was it that decided, Mr. McKee, that there should be five teachers crossing over each way? A. Well,

we studied the situation very carefully after last year, and in discussion with other school systems, similar size and character to ours, and we thought that by and large the best way to start this thing would be in the senior high schools, and we made that attempt. We had hoped to expand it. For instance, we have a vacancy we have had for three or four weeks at Booker Washington, and we have offered it to at least a half a dozen or more people, and some of them will take—they say, "We will take it," then get back and write a letter or call back the next day, they have talked with their husband, and they won't take it; and we have held that open hoping we could expand it some more. But that is the way we are at the present.

Q. How did you decide on the number, ten? A. Number of—I didn't know that there was any magic about the number of ten; we were going to desegregate some faculties in the senior high school; in fact, we first thought about four; then it worked out where we could get five. If we could get six or seven—but we have had that terrific problem of getting the white teachers to accept the posi-

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tion in the colored schools.

Q. Why is it that it was decided that the faculties, the desegregation for this year, should only be in high schools? A. We felt it would work better there; we have tried to work this segregation problem without any hullabaloo as they have had in many places; we have tried to honestly work it smoothly. We felt that there would be less objection in the senior high schools, because one teacher would not have the pupils as much of the day as they would in the lower grades. And we felt that if we could get that accepted—you may not realize it, but even those

five teachers, there will be some seven hundred and fifty white children that will be taught by colored teachers, plus there will be seven hundred fifty children, just with those ten teachers, and we have got the problem; all of those parents, many of these parents say, "Well, it is all right, just so my child is not in that room." And we are going to get the calls and everything that—working to try to get that child out of their room. Plus we have had all this other atmosphere that you are familiar with, that has given some people some hopes.

Q. How many high schools do you have in the Montgomery County school system? A. Well, we have four high schools here in the city.

The Court: All that evidence is before the court, Mr. Ortenberg; this case has been going on a long time. We have taken testimony in it. I know the name of nearly every school in the system.

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Mr. Ortenberg: Yes, your honor.

Q. Mr. McKee, why was it decided that the faculty desegregation would take place in only four of the high schools in the system? A. Because we felt that if we could protect—if—everything better in the city, better than we could in the county. The county is pretty sparsely settled. There is no police force; there is only a few Deputy Sheriffs to cover the whole county; and we have already gone into this with all branches of the law enforcement. We are going to have special protection in every one of these situations where we have had teachers. Just like when we started at Lanier with three colored pupils, those pupils were watched every minute of the day by some-

body. We are going to have to do the same thing in a much greater degree with these teachers; we are going to have to assign our supervisors to spend a large part of their time, because it is going to—any little instance that comes up in that classroom is going to be a race issue, and we are going to have to avoid that, and we are going to try to do it and do it right.

Q. Are you familiar, Mr. McKee, with the—with the order of this court of June 1— A. I am very—

Q. —providing for faculty— A. I am very familiar with it. I know it says that it is our duty to—to integrate the faculties, and I also further know that under the law, we

can transfer teachers by Board action, but we know by experience that malicious transferring of people, when race is not even a problem, will always create a bad situation.

Q. Are—are you familiar with the fact that the order of this court does not limit the faculty desegregation to high school? A. I certainly am, but we were hoping that by doing it this way and getting it into peaceful operation, that next year would be a good bit easier; just like this fall, there will probably be a hundred Negro kids at Lanier, and I doubt if there will be a ripple because of it; but three years ago, if a hundred had appeared there, you would have—the private school system would have opened up here overnight.

Q. Are you familiar with the number of teachers who were displaced as a result of the closing of fourteen schools in the county this year? A. I don't know, but there wasn't any of ours displaced; they are all hired.

Q. Excuse me; I don't mean displaced from the system, but displaced from the schools that were closed? A. They are all hired in the system for next year.

Q. And were—what was the race of those teachers? A. All of them were colored.

Q. Are you familiar with how many there are? A. I would say there was forty odd—there was fourteen schools, and they represented from two to three teachers each.

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Q. Which schools are they assigned to? A. Various schools in the system.

Q. Were they all assigned to Negro schools? A. They were all assigned to colored schools, because these were all elementary teachers, and we wanted to make our start a successful start and make it in high school.

Q. How many—how many teachers are starting in the Montgomery school system in the 1967-68 school year for the first time? A. New to the system, I would estimate around a hundred.

Q. And which school levels are these teachers involved in? A. Well, there are some of all levels.

Q. Elementary, junior high school, and high school? A. Yes; uh, huh.

Q. And have any of the—these approximately one hundred new teachers been—been assigned across racial lines? A. All—all teachers that have been interviewed, even—that is on our application—have been asked if they would—I mean it is on their application and has been discussed—in most instances even when they went to the colleges to interview teachers in the spring, our people asked them if they would; many of them said they wouldn't; a few of them said they would. And those in the high schools, except the few that have stuck, that said they would, after we have

offered them the job, they—in a day or so, they came back and said their husband wouldn't let them or the neighbors were going to criticize them or so and so, and they just resigned.

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Q. Is there a—presently a school construction being conducted at the Carver School? A. Yes.

Q. Does that include any classrooms? A. Yes.

Q. How many classrooms? A. Oh, it's got—four classrooms are being added to the elementary school, and there are—there is an auditorium and an R.O.T.C. rifle range and a band room and a couple of music rooms.

Q. And will the teachers who will fill those four new classrooms all be Negroes? A. I am not sure whether the—I am sure some of those white teachers that are assigned there, probably the R.O.T.C., maybe one other, whatever departments—I don't remember what departments they are in off hand.

Q. Will those classrooms be ready for this school year? A. I think the four elementary ones will; the others won't be ready until a couple of months, I mean maybe longer than that, one of them.

Q. Will the four elementary— A. Yes; we hope to get into those.

Q. —classrooms? A. We hope to get into those, but none—but none of the rural children are there unless they chose to go there, and I don't think any of them chose there.

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Q. You say you hope—you hope to get into those; will they be ready on Wednesday when school starts? A. They will be ready, but I don't—those that are being built

in connection with the auditorium, it will be a month or so before they are ready.

Q. Yes, sir; but the classrooms— A. The four elementary school rooms; yes, sir.

Q. —will they be ready on Wednesday when school starts? A. Well, they will be ready on Thursday.

Q. Is there any other school construction going on? I believe there is a new high school being constructed; is that correct? A. Yes, sir.

Q. When will that high school be complete? A. We hope to open it a year from now.

Q. A year from now? A. Uh, huh.

Q. Have you made any plans about staffing that school yet? A. No; except we have selected the principal is all.

Q. When do you anticipate making plans for staffing that school? A. Oh, after Christmas, sometime in early spring, usually, when we—.

Q. Now, have you had any—any correspondence from —from universities and teacher placement organizations concerning faculty desegregation? A. I don't recall any except from the Alabama Teachers' Association; Mr. Reed, who is one of the witnesses you summoned here, I think

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sent out a letter to all Superintendents that they would be glad to help find any Negro teachers that anybody needed that would go to white—

Q. Did you respond to that letter? A. No; I don't even think it called for a response; it was just mimeographed. I have mine; it was a general letter to all—.

Q. Did you seek the assistance that he offered? A. We —we could find plenty of Negro teachers to go to white schools; that is not a problem with us; I say we can find colored teachers to go to white schools.

Q. Have you received any other such contacts from—from other organizations that might be able to provide white teachers? A. Not that I recall.

Q. Have you had occasion in the past, Mr. McKee, to hire teachers after the beginning of the school year? A. Oh, yes; you will have vacancies during the school year.

Q. How much—how much time can elapse after the school year—or has elapsed after—after the school year has begun when you have hired a teacher? A. Well, it depends on conditions; you will have a death or a teacher gets pregnant or husband moves out of town. It happens through the year; it varies. Either we fill it or either use one of the teachers on the substitute list; a lot of times we just use a substitute teacher, if it is too close to the end of the year, to fill out the year.

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Q. So you have—you have filled the teacher positions as late as two weeks or two months after school has begun? A. Oh, yes; yes, we will hire teachers.

Mr. Ortenberg: No more questions of this witness.
The Court: Any questions?
Mr. Robison: Yes, sir; if the court please.
Mr. Gray: Excuse me.
Mr. Robison: Yes, sir.
The Court: Just a minute; go ahead, Mr. Gray.

By Mr. Gray:

Q. Mr. McKee, have you employed any teachers since June 15, the day of this report? A. You mean—yes; we have employed some teachers since June 15.

Q. Approximately how many teachers have been employed since June 15? A. Oh, I would say thirty, thirty-

five; of course, we have had some of those white teachers that resigned in the colored schools, we have had to re-employ—I mean employ other people for those places.

Q. Approximately how many Negroes and how many white are those? A. I don't have the exact figures; there will be more—more white than there are Negroes.

Q. Were any of the white teachers employed since the 15th assigned to Negro schools? A. Yes; we have had to —had several.

Q. Were those replacements for the five, in addition to

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the five? A. Yes; they happened to wind up even. We were behind the court report, and we caught back up. We thought we were going to get ahead; then this last person resigned the other day came to us or came in and said her husband wouldn't let her take it, and she had been teaching in Detroit before this, but her husband wouldn't let her take it.

Q. So these were replacements; is that right? A. Well—

Q. White ones that were assigned? A. Yes; they were replacements for a vacancy.

Q. And not any in addition to the number. A. We were trying to get ahead, but we just kind of lost.

Q. Can you tell us, sir, how many white teachers have been assigned, period, to formerly all-Negro schools, approximately how many white teachers? A. I would say—not assigned, we have employed them to go there—probably twelve or thirteen, maybe fourteen for those—

Q. And all but the five have refused to go? A. They have either accepted it and then later wrote a letter of resignation, or they said, "I want to talk about it," and

then come back and—the next day or two and say they wouldn't take it.

Q. Now, how many Negro teachers have been assigned to formerly all-white schools? A. We have hired five Negroes to teach in former white schools.

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Q. And all five of those have agreed to go? A. Yes, sir.

Q. Is there any reason, Mr. McKee, why more Negro teachers can't be assigned to predominantly white schools? A. They could be found, but I think if we want to keep—our teachers now are about in proportion to our pupils, about fifty-nine forty-one, and the teachers and pupils both, and I think that if you want to carry this thing out in an orderly fashion through the years, you would want to keep them that; you wouldn't want to have them all Negro or all white.

Q. So the reason you don't have more Negro teachers, even though they are available, is because you can't get more white teachers? A. We haven't been able to; we have been trying to get some more white teachers to go in the situation.

Q. Now, let me ask you this, sir; is it your testimony that contact has been made of every white teacher in the senior high school department, and no white teacher, other than those that have already been assigned, will accept employment in Negro schools? A. In March of this year, our principals spent a whole meeting on the court order. They went back to their faculties to work with them to get anybody that would be willing to accept an assignment across lines. I don't think any came into the office; maybe one colored teacher. Then on April—or something, 13th, some date—I wrote a letter in which I asked each principal to read at their faculty meeting that section of

the court order that pertained to faculty desegregation,

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which was the one we were operating under in April, which is not a great deal different from the one we have now, and we did not get any response from that, not even from the Negroes. But we did, in talking with the Negroes that accepted those assignments, and the whites that accepted those assignments last year, when the Judge relieved us of doing that until this year, they all had said then that they would accept them a year from now; well, in the case of the white teachers, they had—most of them had gone, and with the exception of one, I believe, that we offered her the position; she accepted it, and later wrote a letter that she was leaving town.

Q. So then do I understand, sir, from your testimony that there are no white teachers now employed in the system who would accept employment in Negro schools? A. They did not—they did not respond to our request.

Q. No individual contact has been made? A. Yes; we have contact—we contacted two this week, or last week, or maybe week before last, about this science vacancy we have at Booker Washington; both of them, after they went home and came back the next day and declined.

Q. Now, these contacts you are referring to, either you or Mr. Garrett or some other person in—under your supervision made the contact? A. Well, I happened to be in

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with the group that—that was several of us that talked to these people.

Q. Now, that is with respect to those two; but— A. That's right.

Q. —but individual contact has not been made with the other hundred— A. No.

Q. —white teachers— A. No; no.

Q. —to see whether they would accept it? A. No, sir. They have been notified and have had the word, and, of course, the twelve or thirteen hundred people, that is a pretty big job of individual contact.

Cross Examination by Mr. Robison:

Q. Mr. McKee, was contact made with them through the principals of the schools? A. Oh, yes; with—both at the March principals' meeting and again at the April, when the letter addressed to the principals to take it up at their Monday afternoon faculty meeting with them.

Q. Do you have a copy of that letter with you, Mr. McKee? A. I have if they didn't get it with that other. There it is (presented).

Mr. Robison (to Mr. Gray): That is the one we showed you back there. Please mark that for identification.

The Clerk: Defendants' Exhibit number 1 for identification.

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Mr. Robison: Defendants' Exhibit. We would like to offer that in evidence, if the court please.

The Court: It will be admitted.

Q. In addition to that, was a bulletin sent out to the teachers and principals sometime in March? A. A—a discussion of—at the March principals' meeting, and then when we got no response from that, when each principal was to read that section of the court order at their next faculty meeting and urge teachers to—that would be willing to accept transfer to come in, then we followed it up with this letter, which was in April.

Q. Mr. McKee, do you and the Board of Education realize that there is an affirmative duty on you, under this court order, to desegregate substantially the staff of the Montgomery County system? A. We certainly do realize it.

Q. Is that a factor in making assignments today with respect to teachers? A. Yes, because that—we have made some and with that in mind.

Q. Mr. McKee, is the desegregation of faculty a serious educational problem, based on your experience? A. I think it is going to be the most serious problem of the whole problem in integration, because our people are going to, in my opinion, rebel in large numbers; they are going to cause various kinds of problems; and we can't afford to

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get into it unless we can adequately protect—because you have one incident one year, it will take you two or three years to live it down; and I think that if we had had very many instances in our student problems, then we would have had serious problems. Now, in three short years, we have been able to take a rather small number of Negroes at Lanier High School, and last year we had some seventy odd, and we are expecting around a hundred this year.

Q. Did I understand your testimony to be that the ten teachers which you have now in desegregated schools would teach approximately fifteen hundred students of the opposite race? A. That is correct. Because most teachers in high school will teach from a hundred and fifty to a hundred and sixty to seventy-five pupils during the day.

Q. Mr. McKee, are you still making efforts to further desegregate the faculty of this school system? A. Yes, sir.

Q. Is there a vacancy at Booker Washington now for a teacher? A. There is a vacancy now and has been there for some three or four weeks, in which we have—

Q. Could you have filled that vacancy with a colored teacher? A. Oh, yes; we could have filled it with a colored.

Q. Have you filled that vacancy? A. No, sir.

Q. What efforts, if any, have you made to fill it with a teacher of the opposite race? A. We have—our personnel department has talked to everybody that we had an application for that was eligible. We had one person that had the proper college training, and she accepted it; but we found that she would have to have gotten an emergency certificate because of some little course that she didn't have in that state that Alabama requires, and, of course, if you don't have the exact little courses, you can't get an Alabama teacher's certificate. So we had to deny that to her because she didn't—did not have a valid Alabama certificate, although she has a—is a college graduate and met the requirements in many—in some other states; I don't know how many, but at least she was teaching in another state.

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Q. Mr. McKee, in addition to the ten high school faculty desegregated teaching staffs, do you have other teachers that will be teaching of the opposite race? A. We have some speech teachers that will go into every elementary school, and a few, in a few extreme cases, that will go to high schools where children that have speech defects and work with six or eight, and they will work about six weeks, with part of the day in this school and go to another school; they will work three or four schools a day.

Q. Mr. McKee, you say there are three speech teachers, and are they—and they will be working with the elementary grades; is that correct? A. Yes, sir.

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Q. Do you have a vacancy for a fourth speech teacher? A. Yes; we could use a fourth one, but—

Q. Do you have a fourth speech teacher? A. We had a fourth—or rather last year we had three, but we plan to use four this year. Two of them were white, and one was colored. The colored teacher has had to resign because of pregnancy, but we hope she will be where she can come back and take up, because she will come in in the middle of the year, and it will not disturb anything. And we plan for these to work in all schools.

Q. Is it anticipated that this colored speech teacher will be placed in employment of the school system when she comes off this maternity leave? A. If she wants to.

Q. If she wants to be replaced; and they travel, as I understand it, from one school to another? A. One school to the other.

Q. As needed? A. As needed.

Q. Is that correct? A. By the people with speech defects.

Q. Mr. McKee, have you made any other plans as far as desegregation of faculty with your in-service teaching program? A. Yes, sir; in our in-service teaching program, we have had for a number of years demonstrations,

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that is, where experienced teachers, say in the third grade, or English or math or whatever the field might be, teach a what we call a demonstration lesson; and some fifteen or twenty teachers will come in to study and evaluate that lesson. And we plan to have those with white and colored teachers. Last year we had some in the colored schools where the white teachers went. This year we plan to have some in the white schools for the colored teachers.

And also, all of our faculty meetings and systemwide meetings and small group meetings have been completely desegregated, including our committees.

Q. Do you have certain supervisory personnel, Mr. McKee, in the system? A. Yes, sir; we have—

Q. How will they be utilized? A. We plan to utilize them as feasible on a desegregated basis.

Q. Where the staff has been desegregated, will you have supervisory personnel in those rooms? A. We will have to in those situations; we are going to have to keep our supervisors close to that situation for, in my opinion, several months, because we are going to have a storm of requests to transfer their child out of that particular room. Plus the fact there are going to be some incidents; there are going to be some boys and girls in that room that are going to want to provoke an incident, and we are going to have to watch them with everything we have. Not only us; we are going to have to have the Police Department

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and the Sheriff's Department.

Q. Mr. McKee, after you submitted your report on June 15 to this court, and prior to the opening of school, which is Wednesday, I believe, tomorrow, day after tomorrow, what plans, if any, did you make in order to effect this desegregation of the faculty? A. Well, we had meetings with all principals involved; we had the Chief of Police, along with several of his assistants; the Sheriff, along with his assistants; the Chairman of the Board of Education; many of our supervisors; our attorneys—had all met together to go over plans and procedures for the handling of this situation.

Q. In connection with that, also, have you not gone into a community relations program with respect to various organizations— A. Oh, yes; we have—

Q. —in spite of the present situation with regard to teacher shortage? A. We have carried this into other organizations and have tried to prepare the way for them. I might say that in addition to that, that our substitute list which will go out to all principals tomorrow is just an alphabetical list of teachers, and it—that are available, and tells what grades they are available in.

Q. Mr. McKee, have room assignments been made and equipment assignments been made in the school system? A. Oh, yes; schedules have been made, and the teachers—

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many of them have been by there beforehand, but out of town teachers may be there today for the first time, but they are getting those this morning at the various schools; they will be there all day.

Q. At the schools right today are principals and faculties having meetings? A. All principals and teachers are to be in their schools today from eight thirty until three meeting with the assignments and getting their rooms and equipment and all ready.

Q. Mr. McKee, you stated in reply to a question by the Government and Mr. Gray that approximately a hundred new teachers had gone into the system; that is about ten per cent of the entire student—I mean entire faculty employment of this county, is it not? A. It is not quite ten per cent.

Q. Not quite ten? A. Our turnover would probably run ten per cent or less.

Q. Based on your knowledge and experience in other systems, is ten per cent a very small turnover in a system? A. From what I read in the literature, it is a very small turnover.

Q. Do you happen to know what the national average

is? A. No, I don't; I have read somewhere—it seems like it was somewhere between fifteen or twenty per cent, but I—

Q. Now, you were asked, Mr. McKee, with respect to those faculty personnel that were displaced as a result of

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the closing of certain schools under order of this court; you said they had been reassigned in the system; is that correct? A. They have been placed; every one of them.

Q. Were they assigned to elementary schools; were they all elementary teachers? A. They were all assigned to elementary; one of them we made a principal.

Q. One you made a principal? A. Uh, huh. But he is principal of an elementary school.

Q. Principal of an elementary school.

Mr. Robison: I believe that's all.

The Court: Anything further?

Mr. Ortenberg: Yes, sir; your honor.

Redirect Examination by Mr. Ortenberg:

Q. Mr. McKee, going back now to the teachers; of the—of the ten reported on June 15 who resigned, do you recall when it was that they—that they resigned? A. Well, it would be at different times; some of them may have resigned before the 15th; some resigned after the 15th.

Q. When were— A. Some of them got to a stage that they—they verbally accepted the job, as—as I mentioned, and then went home and came back the next day and said—they said they wanted to talk it over, and they came back the next day and said they wouldn't take it. Of course,

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there was no written thing on that.

Q. When were they replaced? A. Well, at various times; those minutes that I filed there show, but it has been, some of them, in the last month, I think, or maybe less than that that we have just replaced one of them.

Q. Have the resignations been throughout the summer? A. Yes; at various times.

Q. How many—how many of them actually resigned; how many of the ten reported on June 15 resigned? A. Well, I think it was only about two positions that people resigned; but there were several different people hired for those two positions. I think three of them have stuck out all the way through; but if one would resign, we would hire, maybe, somebody else, and then they would resign.

Q. How soon after one— A. Just as soon as we could find somebody that agreed to accept it that was capable.

Q. How long did that usually take? A. We may have an application on file; we try to keep applications on file for all kinds of places; and, of course, at this time of the year, they can't—lots of them that might have taken it can't get released from another place. You see, in—in Alabama a teacher, up forty-five days before school starts, she can resign anywhere she wants to, even—without even consulting where she is working, if she wants to; but then

if a principal or a Superintendent objects after that forty-five days, he has the right to go to the State Superintendent to cancel her certificate if she is going to teach in Alabama. So the—you have a lot of applicants that have accepted jobs and at this time can't get released; they could get released the 1st of July.

Q. Now, Mr. McKee, did I understand you to say that because you have no difficulty in finding Negro teachers, that once you achieved the level, the number of Negro

teachers that you had desired, that you no longer attempted to find additional Negro teachers to teach in white schools? A. We wanted to keep it fairly well in balance, and we felt that that was in the spirit of the court order.

Q. So once you got five, you didn't try to get any more? A. We tried to get this—we still have a vacancy now that we are trying to fill at Booker Washington; we hope somebody—we may be able to get that filled today.

Mr. Ortenberg: All right; thank you.

Mr. Gray: Like to ask just one question.

By Mr. Gray:

Q. With respect to your new teachers, did you inform the new teachers that, as a condition of their employment, they may be assigned to either Negro school or white school? A. Yes.

Q. And integrated school? A. Yes, and it is also on the application; but what they will do is they will sign

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and file the application, then when you offer them a job in that, then they will go home and talk about it and send in their resignation.

Q. But they did understand that they could be assigned in schools— A. Yes; it is typed on the application or mimeographed on the application blank.

Mr. Gray: That's all.

The Court: All right; call your next one.

Mr. Robison: If the court please, in reply, in rebuttal, he asked about teachers that had resigned; we have some letters here.

The Court: I think I understand that situation pretty well; go ahead if you want to.

Recross Examination by Mr. Robison:

Q. Just a minute, Walter; look at these and tell me what they are, Walter? Are those letters of teachers that you had assigned— A. Yes, sir.

Q. —to integrate the faculty and they then wrote you these resignations? A. Yes; most of these are those.

Mr. Robison: All right, sir. Ask that these be marked for identification as Defendants' Exhibit 2.

The Clerk: Defendants' Exhibit number 2 for identification.

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The Court: Any objection?

Mr. Gray: No objection.

The Court: They will be admitted.

Mr. Ortenberg: No objection.

The Court: Any other witnesses?

Mr. Robison: That's all.

Mr. Ortenberg: No other witnesses, your honor; no other witnesses.

Mr. Gray: No, sir.

The Court: You have any other testimony?

Mr. Robison: No, sir.

The Court: All right. You want to be heard in argument?

Mr. Ortenberg: Your honor, the Government's position simply is that—that the school—

The Court: Let me ask you this; how much teacher desegregation do you have in Mobile?

Mr. Ortenberg: I—I think that—I don't recall the exact number, but that is still pending before the court; I think it is a similar—

The Court: Have you had a hearing on your motion to accelerate that down there?

Mr. Ortenberg: There was a full hearing, and the court entered an order in that case, which I believe did not concern faculty, and it is the matter of faculty—am I correct?

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Mr. Ross: (Nodded to indicate affirmative reply)

The Court: Are you having to take that to the Court of Appeals?

Mr. Ortenberg: I believe so, your honor.

The Court: How about your Birmingham; how much faculty desegregation do you have up there?

Mr. Ortenberg: We have been unable to determine the exact number, in the report under the Jefferson County decree for those systems is not—is not due until September 20.

The Court: Uh, huh.

Mr. Ortenberg: However, we expect that if—that if—

The Court: That is after you had to take that one down to New Orleans, too?

Mr. Ortenberg: Yes, sir.

The Court: And that Bessemer and Fairfield the same?

Mr. Ortenberg: The same—in the same group of cases.

The Court: And this is one you haven't had to take down there—

Mr. Ortenberg: That's right.

The Court: —and you waited until a week or ten days before school to file your motion. I just don't have much sympathy for you at all in this

case. I will hear you in argument, though, if you want to make it in light of what my attitude is about it.

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Mr. Ortenberg: Your Honor, I'd just like to say that the reason that the Government waited so long is that we expected that the school system would have been—would be making continuous desegregating assignments during the summer, and as soon as we learned that—that that was not the case—

The Court: You are dealing here with a school system that you haven't had to take to your appellate courts a single time since you started. It is the only major school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they have been ahead of most of your other systems in every field.

Mr. Ortenberg: Your honor, I think there are systems in Alabama which proportionately have done a lot better than Montgomery.

The Court: Other than Huntsville, where are they?

Mr. Ortenberg: Well, I—I don't know them exactly, sir, but I think that under the—

The Court: I know ninety-nine of them that haven't.

Mr. Ortenberg: I—I just don't—do you recall any other places?

(Mr. Ortenberg conferred with Mr. Ross)

Mr. Ortenberg: Mr. Ross tells me that, for example, Chambers and Butler County—Counties

haven't yet, but are scheduled—they are—they are among the ninety-nine—are scheduled to have desegregating assignments which would exceed pro-

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portionately or in actual numbers what the Montgomery County—County has done, and we think that it's—it's—it's a relatively—relatively simple matter to—to make the assignment. The School Board recognizes that it can make the assignments, but it chose to limit the desegregating assignments to high schools, and it—it chose to desegregate only a certain—certain number. Now, granted, there have been some difficulties, but we think the School Board hasn't tried hard enough, and it could try and could make additional assignments for this school year. Classes haven't even begun; they won't begin until Wednesday; and Mr. McKee testified that—that they have—they have hired—in the past hired and assigned teachers to classes after the school year has begun, and we think that it—that that can be done now; except instead of hiring from outside the system, they could be moving teachers around. We think they have had an opportunity, with a hundred new—new teachers—approximately a hundred new teachers for this school year and forty-three teachers who were displaced, to desegregate considerable amount, but that they haven't taken that opportunity, and that the responsibility for doing it this year under this court's order of June 1 still rests with the defendants, and we believe that they can do it now. Thank you, your honor.

The Court: Any argument?

Mr. Robison: If the court please, I would like to briefly say that this school system realizes the af-

firmative duty that your order places on them. They realize that they have the authority and have

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made assignments and transfers of teachers. There was considerable study that went into the desegregation of faculty plan for this system, and we have patterned it, after a fashion, after the pupil desegregation plan. We have desegregated in high schools, and we have speech teachers in elementary schools. We realize that the court order requires that we exercise every effort to desegregate faculties, and we are continuing to do so; witness the fact that we have a vacancy at Booker T. Washington which we have not filled. We will continue to try to in good faith carry out the order of this court. Plans have been made, after our report was made, for a desegregation of faculty based on what we proposed June 15. There has been only one change, and that has been additional three students. And we feel like that we have substantially complied with the court's order, and that there is a substantial desegregation of faculty in this system.

The Court: I didn't mean to cut you off, Mr. Gray.

Mr. Gray: Your honor, there is only one thing I hope the court will consider, and—and—and—in—in—in deciding this case, and that is what effect this court's decision may have in the other ninety-nine school systems in Lee v. Macon, and in these systems, the—their report isn't due until after school starts.

The Court: Has there been any motion filed in this case to bring the order entered in this case in conformity with—excuse me—in conformity with the

order entered by the three-judge court in Lee against Macon?

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Mr. Gray: My recollection is we did file such motion, and we had a hearing on it back in the late spring or early summer; I think such motion was filed.

The Court: Was an order entered to that effect?

Mr. Gray: Yes, sir; the current order was an order after that motion had been made.

The Court: Uh, huh.

Mr. Gray: And I just want the court to consider—

The Court: How does Montgomery's performance generally correspond to the performance of the schools in Lee against Macon, with the exception of some outstanding schools that—how—how—

Mr. Ross: Your honor, I could give you a detailed answer to that question if you would like it.

The Court: Of course, I have those statistics in my office; I could go look it up; but generally, how does it?

Mr. Ross: Well, your honor, I—I don't have it precisely with me at this time; this is based on informal reports made to us and to the State Superintendent's office.

The Court: The only thing I have is what I got through you all.

Mr. Ross: Yes, sir; well, of the ninety-nine, there is approximately forty that have plans for a—for an average of one desegregating teacher per school in their system.

The Court: Forty?

Mr. Ross: That is pretty close to half.

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The Court: With one—

Mr. Ross: At least one—

The Court: —per school?

Mr. Ross: —desegregating teacher per school in the system.

The Court: (Nodded to indicate affirmative reply.)

Mr. Ross: There are ten or twelve of those that have two teachers per system, and beyond the forty, there is another fifteen or twenty that are pretty close to one teacher—per school in the system.

The Court: Uh, huh.

Mr. Ross: The Superintendents, by and large, worked very hard and—in many systems, and have done what the court decree says, no segregated faculty at any school, and where possible, more than one teacher per school.

The Court: Yes.

Mr. Ross: Many have done that. In Montgomery, obviously it is certainly a lot less than one. It will be—I guess there will still be over forty schools in Montgomery County this fall, under present plans, that do not have any interracial faculty whatsoever, and I might add that—that the small rural systems kind of look—keep their eye on what is happening in the big cities.

The Court: I hope they don't watch Birmingham and Mobile too closely.

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Mr. Ross: And—well, the publicity about Birmingham and Mobile has had an adverse effect on

small county Superintendents who were trying to do what the order says, and they—and they say, "What about these people?" Well, the problem is—

The Court: Of course, that is what I am doing now.

Mr. Ross: That's right. Well, the reports in those cases—

The Court: In dealing with one of the three or four metropolitan areas in the State.

Mr. Ross: I think—

The Court: I am pretty sensitive to classifications of schools throughout the State, and I think the rural schools, those that can be classified as rural, should be kept going just about the same pace, with the same performance, and I think that should be true as far as your metropolitan areas are concerned, too. It hasn't been the case.

Mr. Ross: I think we are going to find that the rural systems are doing better than the city systems.

The Court: I think so. I think so.

Mr. Ross: And I think that the basic problem involved in this case, and generally, is to what extent the burden of teacher desegregation is on the—on the teachers and to what extent it is on the Superintendents—

The Court: Well—

Mr. Ross: —as far as—

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The Court: —I have expressed myself on that in the three-judge court case upon two or three occasions: That if you can't do it by persuasion, you do it by assignment.

Mr. Ross: Yes, sir.

The Court: That is what the law requires; there is no question about the law in the case.

Mr. Ross: Well, the point that myself and Mr. Ortenberg are making here—and I think the cities—we may have been late in filing our motion—

The Court: You say they haven't gone far enough.

Mr. Ross: —they are the—they are the examples for these smaller systems, and it is going—it—it is pretty reasonable for a Superintendent in a small system at this point to say, "Look what I have done, I have prepared my community for desegregating a teacher in every school, and in these big cities they are not doing the job."

The Court: Yes. All right, gentlemen.

Mr. Gray: Your honor, just one final thing; and that is I think—and I realize that this—we are much further along in this case than we—than they are in Birmingham and in Mobile, and I think it is because of the difference in the court; but what we are concerned about is while we are dealing here with one school system, I hope we don't meet what may happen in this case in ninety-nine other school systems, and I just hope the court will consider that in whatever ruling it makes.

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The Court: I didn't follow you on that; I am sorry; I didn't understand what you were talking about?

Mr. Gray: What I was simply saying, your honor, is that in view of the fact there is a question of tardiness of the motion, that will not be the question in the ninety-nine school systems who will be

making reports in the next couple of weeks, and I am just hoping that whatever action the court takes here will not be used as a precedent in what the court may do in these other ninety-nine systems as a guide. What I am really saying is that there are ten crossovers here in a big metropolitan school system—

The Court: I understand what you are saying.

Mr. Gray: —and we get to some of these smaller ones, and I would hate for us to meet the same problem in one of our other school systems. And because of the tardiness here, there may be a question of—of penalizing some other persons who would normally receive some benefit.

The Court: All right; has the teacher—the State teacher choice law had any effect in this case?

Mr. Robison: If the court please, we got a notice this morning in connection with that, and they brought it to the office; I have not advised with them about it. Frankly, at this stage, it's not affected Montgomery too much.

The Court: Well, all right, gentlemen.

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Court Reporter's Certificate (omitted in printing)

Transcript of Hearing—February 9, 1968

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Before:

HON. FRANK M. JOHNSON, JR.,
Judge,
at
Montgomery, Alabama, February 9, 1968.

Appearances:

For the Plaintiffs:

GRAY, SEAY, LANGFORD & PRYOR
(Fred D. Gray and
Solomon S. Seay, Jr.).

For the Defendants:

HILL, ROBISON, BELSER & PHELPS
(Vaughan H. Robison and
Joseph D. Phelps).

For the United States:

BEN HARDEMAN,
FRANK D. ALLEN, JR., and
CHARLES W. QUAINTANCE.

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(The above-styled case coming on for hearing at Montgomery, Alabama, February 9, 1968, before Hon. Frank M. Johnson, Jr., Judge, the following proceedings were had:)

The Court: Carr against Montgomery County Board of Education, Civil Action 2072-N, set for hearing at this time upon motion of the United States for further relief, that motion having been joined in by the plaintiffs, and the motion of the United States for additional further relief, filed February 7, that motion having been also joined in by the plaintiffs. Movants ready?

Mr. Allen: Yes, your honor; we are ready.

The Court: Plaintiffs ready?

Mr. Gray: Yes, sir; your honor.

The Court: Defendants ready?

Mr. Robison: If the court please, we have been served this morning with a motion by the plaintiffs in this case which goes into an altogether different facet, namely, transportation. I understood the motion of the United States this morning was pertaining to faculty and athletics. We would move at this time to dismiss or strike the motion filed by the plaintiffs this morning, in that it is not timely filed and in that it is not within the scope of the motion filed by the United States and joined in by the plaintiffs and in that it fails to state a cause of action upon which relief can be granted.

The Court: Well, I will deny your motion; if, after we conclude the hearing today, you, by reason of the late

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filing, want additional time to present other testimony in connection with this facet of the case, I will, of course, give you an opportunity to do that. I won't penalize you because of the late filing.

Mr. Robison: Yes, sir; because we are not prepared at this time—

The Court: My reason—

Mr. Robison: —to go into the—excuse me.

The Court: It is not entirely foreign to the motions now pending. It may particularize, and it does, to more extent or greater extent than the motions now pending, but it is not foreign to the matters for which this case was set today. If I read the motion correctly, the hearing today goes to all facets of the legal duty on the Montgomery County Board to substantially desegregate its system pursuant to the orders that have heretofore been entered; and that, of course, includes transportation, and it refers to all your schools in the system—but, since this is focused particularly to one school and the transportation in connection with that school, if you need additional time, I reiterate, after we conclude the testimony today on this phase of the matter, I will give you an opportunity to be heard further on it.

Mr. Robison: All right, sir.

The Court: But I have read Superintendent McKee's deposition that was taken, and this was touched upon in that deposition on cross examination by Mr. Seay, so he has had notice, and you all have had notice, that they were interested in this phase of the case. So I deny your motion

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to strike and deny your motion to continue this aspect of the case.

Mr. Robison: All right, sir.

The Court: Call your witnesses around.

Mr. Allen: Your honor, could I ask—we have several witnesses; I would like to put them all under the rule, if I could.

The Court: Call them around first, if you will; we are going to swear all witnesses at this time.

Marshal: All the witnesses, please come around, all witnesses who expect to testify.

Mr. Gray: Mr. Scott..

Witness Herman L. Scott: Right here.

Mr. Gray: Mr. Wilson.

Witness Wilson: Right.

Mr. Gray: My witnesses are here.

Mr. Allen: Ours are all here, your honor.

The Court: Your witnesses?

Mr. Robison: Yes, sir.

The Court: All right; swear them.

The Clerk: All witnesses, please raise your right hand. You and each of you do solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God.

The Court: All right; let the witnesses go to the witness

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room, if you will, please.

Marshal: All witnesses, please come this way.

Mr. Robison: If the court please, we would like to have excused from the rule Mr. Walter McKee, who is a party to this case, and Mr. Silas Garrett, who is Associate-Assistant Superintendent.

The Court: They may remain in the court. Your first witness.

Mr. Allen: Call Mr. McKee. If the court please, I would like at this time to introduce Mr. McKee's deposition, discovery deposition, to avoid going into the same matters he has testified to as U. S. Exhibit number 1.

Mr. Robison: We have no objection.

The Court: It will be admitted.

WALTER MCKEE, a defendant, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. Will you state your name, please, sir? A. Walter McKee.

Q. Are you Superintendent of Education of the Montgomery County? A. Yes.

Q. How long have you held that position? A. Since July of 1958.

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Q. I believe you testified—testified at your deposition that since September 1, 1967, your system has hired thirty-one new teachers; is that correct? A. I believe that is correct?

Q. And since that same time, twenty-two teachers have left the system; is that correct? A. I believe that is correct.

Q. You also mentioned seven of the thirty-one teachers who were placed in situations where their race was in the minority? A. That is correct.

Q. Of those seven, two are white teachers who were assigned to the Paterson School; is that correct? A. I believe that is correct.

Q. And two white teachers were assigned to Hayneville Road School? A. Correct.

Q. Now, one was a white teacher who was assigned to the Goode Street School, or Goode Street School? A. That is correct.

Q. And Goode Street School actually now has an all white faculty; isn't that correct? A. That is correct.

Q. It has— A. However, a majority of the students are colored.

Q. —in excess of fifty per cent of the children are Negro; is that right? A. More than likely.

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Q. And one of those seven, the only Negro teacher of those seven, has been assigned as a speech therapist? A. That is correct.

Q. One of the teachers has been assigned as a—assigned to Booker Washington; is that correct? A. One, Booker Washington; yes, I believe that's right.

Q. I believe you also testified that for the first semester of 1967-68, you had approximately one hundred fifty student teachers in your system; is that correct? A. That is correct.

Q. And none of these were assigned to situations where their race was in the minority? A. That is correct.

Q. For this semester, you have now assigned four Negro student teachers to predominantly white schools? A. That is correct.

Q. How many student teachers do you estimate you will have throughout the system for this current semester? A. Well, it would vary, because, as I told you in the deposition, that Auburn is on a quarter system, and they are not on a semester system, and we will have some from Auburn and some Troy; I would say we could have as many as two hundred at one time, but it will vary as one school's quarter ends and one's semester ends.

Q. You say you will have as many as two hundred at

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one time? A. We could have; yes.

Q. Do you say—that means that the total for the whole semester would be in excess of two hundred? A. The Auburn teachers on a quarter system; they are not on a semester system.

Q. I mean your total? A. Somewhere in that neighborhood; I wouldn't know exactly.

Q. The Jefferson Davis High School which is being constructed on Carter Hill Road, you plan to open this this coming fall? A. Yes, sir.

Q. Prior to this hearing, when I asked you to mark on this map which is Plaintiff's Exhibit 1 to a prior hearing previously introduced in this case location of the Jeff Davis High School; is that correct? A. Yes, sir.

Q. Is that this X marked right here I am pointing to? A. If that is right across from Carter Hill Road Elementary, that is it.

Q. All right; I also asked you to mark the location of the other high schools in the city of Montgomery, and are these other X's that I am pointing to here those high schools? A. Yes, sir.

Q. This X located on Court Street is Lanier High School— A. That is correct.

Q. —correct? This one on Fairview is Carver? A. Carver.

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Q. This one is Booker Washington— A. Booker Washington.

Q. —right? And this one? A. Lee.

Q. And you also testified, I believe, on page twenty-five and twenty-six of your deposition; "About how many teachers will you have out there next year," referring to Jeff Davis High School— A. Well, is that—

Q. Excuse me, let me finish reading. "Well, of course, since the school will be operated under a freedom of choice plan, it would all depend on how many choose it. Now, we opened a new school several years ago, and it was made up largely of tenth graders, and most of the eleventh and

twelfth graders decided to stay in their old school. This may be different this year. We have no way of knowing." Question, "You won't really finalize your faculty plans until after the choice period? Yes, sir. When is the choice period? In March. It ends the 31st?" Answer, "The 31st of March." Now—now, is that—the inference to be taken from that that you will assign teachers based on where the students come from? A. We—

Mr. Robison: If the court please, we would object to what the inference to the question is.

The Court: Well, I sustain it to that question; go

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ahead and ask him what his—what he intends to do.

Mr. Allen: Well—

The Court: That part of his testimony in the deposition is unclear, very unclear; it is not developed sufficiently.

Q. What—

The Court: You might develop it now, if you wish.

Q. Where do you intend to get the teachers that you will assign to Jeff Davis? A. When the choice period is over on the 31st of March, then the principal, Mr. Rutland, will notify all of the students that have chosen Jefferson Davis School to meet—where we haven't decided—or he will go to schools where there are large numbers of them coming from, and they will be given a chance to choose the subjects that they want to take. Then after they choose their subjects, you can see how many English teachers you will need, how many Math teachers, how many Typing

teachers, how many of any of the other subjects—Economics—that you will need, French or whatever we offer; and, of course, what they choose will be what they will get.

Q. Then where will you get the teachers to teach those subjects? A. Well, the teachers will come from the other four high schools or newly employed people or somebody moved up from the junior high; we don't anticipate a great many more students than we have this year.

Q. What is the relationship between—between the stu-

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dents, or where they come from, and the—and where the teachers will come from, if any? A. It doesn't—it doesn't make any difference where the students come from under the court order provided—

> The Court: What he is asking you, Mr. McKee, to use an example, if a thousand of your Lanier students, through the freedom of choice, elect to go to your Jefferson Davis School, are you going to then get the teachers from Lanier that formerly taught the thousand; that is what he is asking you?
>
> Witness: Well, we—we just have to work it out. Some of them might not fit; we might have to transfer others; some of them undoubtedly would come from there or Booker Washington or whichever other school that—

Q. Teachers are assigned to various schools based on average daily attendance for the previous year; is that right? A. Well, in high school, it's—it's partly average daily attendance, and partly by the subjects that is in demand in those particular schools.

Q. Well, there is a relationship between how many teachers you have at a school and how many students you have there? A. Oh, sure; sure.

Q. So if—if you have fewer students at Lanier next year than you have this year, you will have fewer teachers? A. That is correct.

Q. And, by the same token, if you have the same number of students at Booker Washington this year, you will have approximately the same number of teachers? A. That would be correct.

The Court: On that point, have you already entered into your contract—contracts with your teachers for Lanier and Booker Washington next year?

Witness: No, sir; we have sent out notices to find out which teachers want to come back for next year; that is as far as we have gone.

The Court: When is your usual period of contracting with your teachers?

Witness: We usually—sometime in April we notify teachers that unless they have been notified otherwise, they are hired again for next year.

The Court: All right; go ahead, Mr. Allen.

Q. You have already appointed a principal and five faculty members for Jeff Davis High School; is that correct? A. I believe that is correct.

Q. Are they all white? A. They are all white.

Q. The five faculty members are—in addition to their teaching duties, will be the coach, two assistant coaches, a band director, and a principal's assistant? A. Principal's helper; he is not—we are not quite big enough for

an assistant principal, but this person will teach and help

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in the office.

Q. He will help the principal with the administration? A. Part of the day; yes.

Q. I believe you have also stated previously that it is not now your current plan to furnish any transportation to Jeff Davis High School— A. That is correct.

Q. —next year? You also plan to open two elementary schools next fall? A. That is correct.

The Court: New ones?

Mr. Allen: Yes, sir—

Witness: Yes, sir.

Mr. Allen: —new ones.

Q. Those are—the construction will begin on that shortly? A. Well, it's—it is begun on one, and I am pretty sure it is begun on the other one; the contract has been signed.

Q. And do you plan to furnish any transportation to those two new schools? A. No, sir. See, as I testified, our transportation is for rural children, not in the city area.

Q. Well, do you now furnish transportation for rural students into the city to the other schools? A. Yes; we have been in some certain city schools, not all of them.

Q. You furnish transportation to Lee, Lanier, Booker

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Washington, and Carver? A. That is correct.

The Court: Within the city?

Witness: No; it is from the county. Now, there may be a few in certain areas that have been re-

cently taken in if it hasn't been changed; but, by and large, it is the rural children. We have about only about eight thousand of our children are transported.

The Court: Now, one of—go ahead.

The Clerk: Government's Exhibits 2 through 32 marked for identification.

The Court: 2 through what?

The Clerk: 32.

Q. I will hand you folders marked as Government's Exhibits 2 through 32, and ask you if you will identify those, please, sir? A. Well, I believe they are the folders that you copied of the teachers that have been hired since the opening of school.

Q. All right. A. And incidentally, Mr. Garrett hired another one yesterday who is a colored teacher going to—I mean a white teacher going to a colored school.

Q. Which school is that? A. I—I can't say for sure; it is Paterson—no, it is—is it Paterson?

The Court: Fews.

A. Fews—Fews Elementary.

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Mr. Allen: I offer Government's Exhibits 2 through 32.

Mr. Robison: We have no objection. They are copies; those are the copies of the records which you got that deposition from?

Mr. Allen: That's right.

The Court: They will be admitted.

The Clerk: Government Exhibit number 33 for identification.

Q. I will hand you a bundle of documents marked as Government's Exhibit 33, ask you if you will identify these, please, sir? A. Those are the weekly reports made by our schools and up through—they did not include last week, because they were not quite all in, but it is the week before.

Q. Are these regular business reports? A. No; they are regular weekly attendance reports.

Q. And they are submitted to you by the principal of each school? A. That is correct.

Q. Do those records show the number of substitute and the names of substitute teachers which have been used for the week that the report covers? A. At the bottom of the report, it says, "Name of teacher, number of days, cause of absence, name of substitute employed," and it shows the number of days she taught.

Mr. Allen: I would like to offer U.S. Exhibit 33 into evidence, and we have agreed with Mr. Robison

that we will copy these and substitute copies so that they can keep their records.

Mr. Robison: We have no objection.

The Court: They will be admitted.

The Clerk: Government Exhibit 34-A and 34-B, 35-A and 35-B, 36, and 37 marked for identification.

Q. I show you two documents marked as Government's Exhibit 34-A and 34-B, and ask you if you would identify those, please, sir? A. Well, this is the 1965 and '66 list of substitute teachers.

Q. Are there two lists? A. Yes.

Q. Does one list contain all Negro names? A. Yes.

Q. And the other all white names? A. And the court a year ago said that we did not have to desegregate the faculty for that year; we separated the lists as we had been doing in the past.

Q. Could you tell us which is the Negro and which is the white? A. Well, I am sure this is the colored, because—

Q. Indicating 34-B? A. Yes.

Q. How can you tell that is the Negro? A. I am guessing by some of these streets.

Q. And— A. This is the white.

Q. —34-A would be the whites.

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Mr. Allen: I offer Government's Exhibit 34-A and B into evidence.

The Court: If I understand it, A is your list of white substitute teachers; B is your list of Negro substitute teachers; is that right?

Witness: That is correct.

The Court: All right; for '65-66?

Mr. Allen: Yes, your honor.

The Court: All right. It will be admitted.

Q. Now, I will show you documents marked as Government's Exhibit 35-A and 35-B, and ask you to identify those. A. That is the substitute teachers' list for last year or the '66-67.

Q. Now, there are—there are two lists there, also? A. There are two lists, because this was the year, really, that we got the order; that—we had been making them two in the past.

Q. Now, which is—these also all one—all Negro names

on one and all white on the other? A. That is correct. As far as I know, it is.

Q. And which is which? A. This is the white, and this is colored.

Q. You have indicated white as 34-A; is that correct? A. Well, whatever this one is.

Q. This one; all right. A. All right.

Q. And 34-B is the Negro list? A. That's right.

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Mr. Allen: We offer these into evidence.

The Clerk: 35, I believe.

The Court: It will be admitted.

Mr. Allen: I beg your pardon, those—that's right; 35-A and 35-B.

Q. Now, I show you Government's Exhibit 36 for identification, and ask you to identify that? A. This is the complete list of substitute teachers for '67-68.

Q. That is the one— A. Giving the telephone numbers, street address, what their subject preference is, and the number of years they have been to college.

Q. This is the one that is currently being used? A. That is the one in use.

Mr. Allen: I would like to offer this into evidence.

Mr. Robison: We have no objection.

The Court: It will be admitted.

Q. Now, I will show you Government's Exhibit 37 for identification, and ask you if you have seen that before? A. That is not ours; I have seen a State Department Directory; that is not—

Q. Well, can you identify that? A. Well, it says, "Educational Directory for 1966-67, authorized by State Board of Education."

Mr. Allen: I would like to offer this into evidence.

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Mr. Robison: If the court please, we would object to the introduction of that unless he can further show that it is pertinent to this case or Mr. McKee has a copy of it or that it—

Mr. Allen: Your honor, the purpose of this is it lists in there high schools by race, and we want to —for purposes of our—part of our case pertains to scheduling, we will have to identify the high schools.

The Court: Well, is there any question about it being official publication of the State of Alabama Department of Education?

Mr. Robison: I don't know, sir.

The Court: Well, do you state that it is?

Witness: Yes, sir; that is—I think that is the directory.

Q. Is it—

Mr. Robison: We have no objection, then.

Witness: Well, it lists Board members, superintendents, and principals, and people at State Department, but we have nothing to do with publishing that.

The Court: All right; it will be admitted, then.

Mr. Allen: I have no further questions of this witness, your honor.

The Court: Plaintiffs?

By Mr. Gray:

Q. Mr. McKee, I think you testified with respect to the fact that the three other high schools in the city provides

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transportation for rural children; is that right? A. I believe it was four.

Q. Four others. May I direct your attention toward the Lee High School, which is in the eastern part of the city of Montgomery; is that correct? A. That is correct.

Q. Now, basically, what rural children transportation would be afforded to these children? A. From the Atlanta Highway around to the Wetumpka—Lower Wetumpka Road.

Q. And what general area would, say, Lanier High School, that is on Court Street, that— A. From the Atlanta Highway around to the bridge on the River going to Birmingham, within, say, eight or ten miles out in the country.

Q. Say from the Atlanta Highway North? A. Well, clear around to the River bridge going to Birmingham.

Q. Or South from the Atlanta Highway? A. Well, you would come around Montgomery; the Atlanta Highway is the dividing line between the transportation.

Q. So then we will say students in the Southeast section of Montgomery who live in the rural, would they be transported to Lanier, or would they be transported to Lee? A. Well, it would—they would be transported—it depends on which school they chose; if they chose—they would be transported to either Lanier or Carver—

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Q. Now, do— A. —depending on their choice. Depending on their choice.

Q. Does the Board of Education provide transportation to the students who, say, choose Lanier: Let's take a Negro student who lives down the Woodley Road; now, does the Board of Education provide transportation for that child to go to Lanier High School? A. If he chooses it. If he chooses it.

Q. It does provide it? A. Yes, sir.

Q. Does it provide transportation for them to go to Lanier—I mean Lee High School? A. No.

Q. All right. Now, do you recall a conversation with some representatives during last fall with respect to providing transportation to—to Lanier High School from the Woodley Road area, and they were advised that the only transportation available in that area was transportation either to Carver High School or to Booker Washington High School? A. No, sir; I don't remember that.

Q. Do you have or is any transportation provided down the Woodley Road area to Negro students at all so far as Lee or Lanier are concerned? A. On the Woodley Road down to a certain distance, they have a chance to go or choose, and the buses go to Lee—I mean to Lanier or Carver.

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Q. Now, I think, Doctor, at the time the choice forms were sent out, it indicated on the forms which schools had transportation provided? A. It had an asterisk by the schools that had transportation provided.

Q. And is it your testimony, sir, that on those forms that were given to Negro children in the Woodley Road area, there was an asterisk indicating that they could have selected Lanier High School or Lee High School? A. No; it was—well, it—it showed both of them, but if they had

chosen Lee, we would have sent them a letter that from that area buses do not run to Lee High School, but there would be buses to Lanier or Carver.

Q. And you are sure that the asterisk was there for Lanier as well as Carver? A. Oh, yes; we have got some that are transported to Lanier.

Q. Now, let me ask you further with respect to transportation, and I want to direct your attention again to this area in the Southeast part of the city; now, students who live down the Woodley Road, Narrow Lane Road—there are some Negroes who live in this area; is that right? A. Yes, sir.

Q. And there are some of both elementary and high school age? A. And junior high.

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Q. And junior high. A. (Nodded to indicate affirmative reply)

Q. Now, let me ask you about transportation on the elementary level; do those students in that area—they were indicated on the form; what schools did it indicate transportation would be provided for them? A. In that area?

Q. Yes, sir? A. Goode Street and Hayneville Road, it had—of course, the form has all of them that have—but if there had been any question, those were the two that that would serve.

Q. Yes, sir; transportation was provided. A. That's right.

Q. Now, this area down here, you have some on five or six miles, southeastern part; now, where is the Hayneville Road Junior High School or Hayneville Road Elementary? A. Well, it is on the By-Pass right near the Reconsignment Point.

Q. But that is—actually, it is in the western, is it not—the western part of the city? A. Well—

Q. You mind, sir, coming around showing us where Hayneville Road Elementary School is? A. There it is. That is the Reconsignment Point.

Q. Here is the By-Pass. A. Right along in here.

Q. All right. Now, if you will, just stay here just a

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moment, sir. Will you make a mark about where on Hayneville Road is it? A. I can't find the Reconsignment Point; it is almost—

The Court: You will have to speak out so the reporter can hear you.

A. I said right across the street from the Reconsignment Point; I don't see that marked on here.

Q. This is the Western By-Pass right here, and Hayneville Road. A. I believe—where is—

Q. And here is the Hayneville Road. A. Fairview coming out.

Q. Mobile Road. A. Right here; it would be somewhere right along in here, I guess.

Q. Would you put a large mark and circle it; that is the Hayneville Road School. One other thing before you go back, if you will. Now, show us the general area where these Negro children live who must go to Hayneville Road School, east or west, for transportation in the southeastern part of the city. A. Any student that lives between the Atlanta Highway—wherever the Atlanta Highway is—

Q. That would be here. A. All right; on this side of the Atlanta Highway around on the periphery outside, he

would be transported to Goode Street or Hayneville Road if they choose the transportation.

Q. Now, would those children—would you show us where

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Goode Street is? A. It is—right in here; right there.

Q. If you will, make a mark and circle a large— A. (Witness marked map)

Q. Circle that. A. (Witness marked map)

Q. Thank you. Approximately how many schools would an average Negro child who lives on the either south-eastern or south—southern part of the city have to pass in order to get to the Hayneville Road School? A. Well, it would depend on which way he went; if he went—if he went around that By-Pass, I believe Harrison would be the only one he would pass.

Q. Let's go back to my example of down the Woodley Road. A. Well, I presume he would come up to the Woodley Road, to the By-Pass, and go right around, that would be about the best way.

Q. You have already got an elementary— A. Got Harrison.

Q. —already on Woodley Road— A. Have Harrison.

Q. Do you have an elementary school already on the Woodley Road? A. Not yet, no; we are going to build one out that way.

Q. Where is Bear School? A. Bear School is on the McGehee Road, right off the McGehee Road; I have forgotten the name of the street in front of it, but it is right there at the intersection of the McGehee Road and

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Woodley Road; I think there is a church, and they have the school.

Q. It is just about on the Woodley Road, isn't it? A. Well, it is on the Woodley Road, but it is a long ways from the edge of town.

Q. But it is south of the Southern By-Pass some four or five blocks; is that correct; on the Woodley Road? A. It is north of it—

Q. It is north? A. —toward town.

Q. North of it. Isn't there an elementary school on the Woodley Road that's south of the Southern By-Pass? A. Not on the Woodley Road.

Q. It is one on the McGehee Road? A. No; McGehee Road ends up there about the Montgomery Fair.

Q. Now, where is the proposed new elementary school to be built? A. It is in Spring Valley.

Q. And is that on the—approximately where would that be on this map? If you will, come and show us? This is the Woodley Road here. A. It is right along about just this side of Baldwin Slough.

Q. All right; make a little mark, if you will, Mr.—so that is the proposed new elementary school. And this elementary school is near a great deal—quite a few Negroes who live further down the Woodley Road and further down Narrow Lane Road? A. Yes; it is nearer to some Negroes and white people that live down that road.

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Q. All right; and you are saying that no transportation will be provided for these students, even though they live farther than two miles from this elementary school? A. This will only be a very small elementary school; we are constructing twelve or thirteen rooms, and it is built largely for—oh, it will be plenty of people within two miles of it.

Q. As a matter of fact, there is a new white subdivision

where that school is going up, isn't it? A. It is a new subdivision.

Q. And is there any logical reason why the school cannot be built large enough to accommodate these other students who live in the same general area? A. I am sure there will be colored students, plenty of colored students within two miles of that school.

Q. But I am saying, is there any basic reason, Dr. McKee, why that school could not be constructed large enough to facilitate children who live two or three miles further and who must now ride some ten to twenty miles a day to get to a school? A. Well, I doubt if there is any riding twenty; there might be some riding ten. Of course, money is always a problem; if you had enough money, you could build schools anywhere you want.

Q. That's right; as a matter of fact you are building and adding to—to the McIntyre Elementary School, aren't you? A. We have built a junior high there.

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Q. Built a junior high there; that is in a Negro pocket on the west side of town? A. We built it because the Government requested us; they were fixing to build this Gibbs Housing Project, and we had to write that letter that we would have enough schools that serve in that area.

Q. Yes, sir. A. And we have finished the building and operating the school this year.

Q. As a matter of fact, there has been additions that this Board has made to the Hayneville Road School since this court order has been in effect, hasn't it? A. Yes; we have—we had permission from this court to build some rooms at Hayneville Road.

Q. And it is these Negro children who is going to pass by this new school to go to Hayneville Road in order to

have transportation, isn't it? A. There will also be some white children that will pass by, too, if they want to ride the bus.

Q. So then there is nothing that the—if the Board wanted to, it could make this school large enough to facilitate the elementary school kids in that area, couldn't they? A. I don't think it would be big enough by next fall.

Q. Now, let me ask you this, sir; the high school students in this area, transportation is provided for them at Carver and Booker Washington; is that right? A. Trans-

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portation is provided for them at Carver and Lanier, Booker Washington when you get to the Atlanta Highway, when you get to—

Q. Yes, sir; let me direct your attention, now, to the new high school. And I think you testified that at all of the other high schools in the city, transportation is provided; is that right? A. That is correct.

Q. What was the criteria used by the Board in determining to provide transportation at these other high schools? A. It has been the policy of the Board for twenty years; when we first—Montgomery began growing that we left our transported schools where they were, and we knew that in the areas that were growing, that those schools would fill up with people that lived right around the school, and we have continued to transport; we have been transporting to Capitol Heights Elementary, to Goode Street, and Booker Washington Elementary, and now Hayneville Road; we used to could handle them at Carver until Carver got so big, and we had to build another building, and we have been doing that for years. And Pender Street is another school that has transported elementary children.

Q. All right; now, you have had and there is now going up at the Carver High School additional classroom facilities; is that right? A. There is an auditorium and a band room and a room for the R.O.T.C. and I believe a choral room.

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Q. Is there any real basic reason, sir, why this Board cannot provide transportation to students who qualify for it to this new high school? A. We feel that we have decide—that we would transport to the ones that we have been transporting to.

Q. Now, won't that—won't the effect of this be that many Negroes who don't live in the direct area of a school, but who live nearer that school, and doesn't it mean that you won't provide transportation for them, and they will have to go a long way— A. Well—

Q. —in order to get it? A. Well, as I interpret the court order, under the freedom of choice, if a—and I have the feeling there will be a large number of people choosing this as a new school, they would be turned away because of distance.

Q. Now, that wouldn't eliminate the problem so far as transportation is concerned? A. Well, I mean, what I am saying is, if the school was full at the end of March, then we have got to notify those that live the furthest away from the school, and that would be the ones—the transported people would be the ones.

Q. Is that why you are saying the Board decided not to have any transportation here? A. That is why the administration has decided; yes.

Q. Describe for the court, if you will, the general area where this—where this new high school is being built?

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A. Well, it is being built on Carter Hill Road between the old Green Lantern, or the Green Lantern Branch of the Union Bank and Trust Company, and Masonic Home.

Q. Is this a fastly growing area, populationwise? A. Very fast.

Q. And isn't it right in the middle of a very gross white population area? A. It is in the middle of a fast growing area.

Q. White people are the only ones live there except a little pocket of Negroes who—who—there are two or three houses right at the Masonic building and the Vaughn Road; there are very few Negroes out in that area; isn't that right? A. I don't know of very many; no.

Q. Sir? But I don't know when there will be some.

Q. And the nearest Negro families, except for this little pocket that is right at the Carter Hill Road, Vaughn Road, railroad and the church, there would be these Negroes that live down the Vaughn Road, Woodley Road, Narrow Lane Road, and this rural area to the east of Montgomery? A. Well, I would think that those in the Carter Hill area, on the Carter Hill Road area, would be nearer than that.

Q. What you mean— A. I mean—

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Q. —the area near— A. —the area in the Carter Hill Road where the Negroes are moving in and across Carter Hill and all in that area, there are some of them that would be closer.

Q. You are talking about the area of Carter Hill Road right around at the back of Alabama State College? A. That's right; and there is a good bit of movement there, colored people in the former white area.

Q. As a matter of fact, the area where this new high school is being built is a pretty—really, it is more the upper echelon than the lower income group of people that live out there? A. I see some pretty big houses out there—

Q. Yes, sir. A. —and there are some that is not so big.

Q. Now, let's talk for a moment, if you will, sir, about your other elementary schools. A. All right.

Q. And where is this other elementary school that is to be built? A. It is at Southlawn out in—on beyond the Mobile—intersection of Mobile Highway and the—and the—it is right in here.

Q. It is on the southern part of the city toward the west; is that right? A. Well, the south; it is south.

Q. South? A. I guess it would be a little bit west; yeah.

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Q. Now, is that in a new white subdivision? A. It is in a new subdivision; I don't know the composition of it altogether.

Q. And aren't there a substantial number of Negroes who live, say, more than two miles south of—of this new school down Highway 31? A. Yes.

Q. Going toward Hope Hull? A. That's right.

Q. And you have a—a densely populated Negro area in there? A. Of course, on that area, they have the choice of Pintlala or Hayneville Road.

Q. Now, do they have transportation to either of those? A. Transportation to Pintlala and Hayneville Road down the Mobile Road after—beyond this subdivision, after you get a few miles beyond that.

Q. No transportation is being provided at this particular school? A. Transportation this year provided to Pintlala and to Hayneville Road.

Q. Tell us, sir, has the Board actually revised its whole

transportation system so as to eliminate the dual system and to eliminate the overlapping of routes as this court directed in its order this summer? A. This Board—I mean we have had to change bus routes from time to time.

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Q. I am not asking you that, sir; I am asking you whether or not now, as result of this court order, all of the overlapping where you had white buses going to predominantly white schools and vice versa, has all that been eliminated? A. I couldn't say that all of it has; we—our buses, as we pointed out, serve these various schools, and they take the people that choose those schools.

Q. Now, do you understand it to be the responsibility of the Board to completely revise the transportational system from a dual system to a unitarial system? A. We—we do it in the sense that—now, our schools are not sitting side by side that they go to. For instance, the example I just gave you, Pintlala and Hayneville Road, the buses that have the children that want to go to Pintlala, white or colored, go to Pintlala. The ones who want to go to Hayneville Road go to Hayneville Road.

Q. Who in your office is responsible for the formation of and the outlining of routes to be sure that this court order has been carried out? A. The principal—the principal of the school is first, and then we have a Mr. Harris who is supervisor of transportation and Mr. Kirby who is the assistant superintendent in charge of transportation.

Q. Has the principal, say, of Carver High School and the principal of Lanier High School gotten together and decided on how to— A. No.

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Q. —have a transportation system so there will be no duplication? A. No; we have not done that, because you could not make a bus route—if you tried to get a bus into Lanier driveway and then go over and get into the Carver driveway, you would have children leaving home an hour earlier. We try to fix it where a bus will have to serve only one school if possible.

Q. So then actually, a—when—when it is left up to the principal to decide, he would be unable, really, to do it, because he isn't aware of what the other school does? A. Well, we know the impossibility of getting in these driveways, especially on rainy days, of these large schools, and we try to eliminate at all times where possible—

Q. Has the Board designated any particular person in your office and said, "The court has directed us to desegregate our school system, and I would like for you to see this is done"; has any such responsibilities been delegated to any particular person? A. We have tried to operate our buses in a way that we would serve the people to the best advantage and eliminated duplicate—we had very few duplicate routes, anyway.

Q. Then do I understand, sir, from what you are saying, nobody has been assigned that responsibility? A. Yes, we have all read the court order; we have the court order and have studied it, and we have tried to carry it out to the best of our ability.

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Q. I understand that, but no one has been given the specific responsibility? A. Not by the Board, because the court has already given the order.

Q. Well, I am saying, has any administrative assistant been assigned the responsibility? A. We have a—dis-

cussed it among the ones that handle transportation; yes, we discussed it.

Q. Let me be sure I understand your testimony, sir; is it your testimony that there is now no duplication and overlapping? A. Yes, there would be some; but, as I pointed out, so many of our schools are completely different, I mean not—they are not sitting side by side.

Q. Do you know whether or not—have you recommended to the Board that one way to accomplish desegregation of transportation would be to appoint someone responsible for seeing that this phase of the court order is carried out; have you made that recommendation? A. I haven't made that recommendation; it is in the court order; we handle it just like we have been handling it—I mean in our system. And yes, sir; our transportation man works with us, and we have many bus routes, buses that are integrated.

Q. In other words— A. In fact, we have one—we have had delegations call the Board and everything that got more Negroes on it and everything than it has whites, and we have had some problems on that bus.

Q. Now, let me direct your attention a few moments to

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your athletic program. A. (Nodded to indicate affirmative reply)

Q. What has the Board done toward desegregating the athletic program in the Montgomery County school system? A. The Board has let any child that is in a school go out for any type of athletics that he desires.

Q. That is within a school? A. That's right.

Q. Now, will you tell us whether or not there are in fact two athletic associations, one that is membership by the predominantly white schools, and the other membership by the predominantly Negro schools? A. I think

that is correct; I couldn't tell you the names of but one of them, but I think that is correct.

Q. Now, what has the Board done toward doing away with this dual athletic system? A. We have nothing to do with the athletic system, except our schools belong to it; we—we are—the Board does not contro[illegible] the Alabama High School Athletic Association or the one for the colored schools.

Q. Who makes up—but each of your schools—let's take the high schools; each of the high schools are members of the association; is that right? A. As far as I know, they are; we don't—

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Q. Each— A. That is handled by the principal of the school, but—I think all of them are, but I couldn't be positive.

Q. And all the white ones are members of the white association? A. I know that the white ones are members of the white association; I think that the colored are members of their association.

Q. And has the Board—and are the principals of the schools members of the association? A. The coaches are; I don't—I am not sure about whether the principals are; I know the coach would be a member.

Q. Now, has the Board given instruction to the principals of the schools or the coaches and directed them to take some steps toward desegregating or toward merging these two athletic associations? A. No; no, we felt that that is not in our field.

Q. Do you, as superintendent, and as you interpret this court's order, does the athletic—is the athletic program included as one of the items to be— A. It is, as I understand it, within that school, which we have carried out.

Q. You mean within the individual school? A. We have had Negroes to go out for football at Lanier.

Q. But you don't understand, or do you understand, the court order to mean that it goes further than once you get into school being able to participate in all of the activities? A. Well, we—we allow them to participate in all the ac-

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tivities of that school—

Q. Tell me, sir— A. —and we had—we had one game this year when there was six members of the colored race on an opposing team from Tuscaloosa that we played.

Q. Now, that school that you played was a school—predominantly white school? A. I don't know; that football team at that moment was predominantly colored.

Q. What school was it? A. Tuscaloosa.

Q. Sir? A. Tuscaloosa High School.

Q. You are familiar with Tuscaloosa High School, aren't you? A. Yes, sir.

Q. And you know that that is a predominantly white school? A. It has rather sizable number of Negroes.

Q. What— A. I would imagine more white; sure.

Q. Let me ask you, has Lanier, to your knowledge, ever played Carver? A. No; they haven't played Carver.

Q. Has Lanier played Lee? A. Yes.

Q. Has Lee played Carver? A. No.

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Q. Is there any plan, so far as you know, for Lee to play Carver? A. Not that I know of.

Q. Or Lee to play Jeff Davis? A. Not that I know of.

Q. Aren't you, or are you, familiar with the fact that the coach, the newly appointed coach, of Jeff Davis has indicated in the next couple of years they will probably play Lanier and Lee? A. I saw that in the paper; yes.

Q. That's right; did you—have you seen that they will also play Carver and Booker Washington? A. I haven't seen that.

Q. Now, let me ask you this; I believe, sir, you testified that the five persons who have been employed to go to the new school, Book—I mean Jefferson Davis High School, are all white persons; is that correct? A. That is correct.

Q. Now, did they, all except one, I think that was the band—proposed band director, did they all come from schools that were predominantly white schools? A. Yes.

Q. Has the Board considered employing any Negro at any—in any administrative position at Jefferson Davis High School? A. There won't be but one administrative position.

Q. Well, administrative or semi-administrative? A. Well, teachers; we are going to have plenty of teachers there.

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Q. You saying you are going to have plenty of Negro teachers at Jefferson Davis High School? A. Yes, sir; we are going to have some Negro teachers; we have been planning that all along.

Q. Plenty of them? A. We are going to have some.

Q. In your opinion, how many Negro teachers do you contemplate having at this school? A. I would say around seven.

Q. Seven out of probably forty, I think in your deposition— A. Well, that would be the most, if it—if it—it is somewhere between thirty and forty, I would say.

Q. Now, approximately how many of these seven are going to be floating teachers? A. I don't know that; we may not have any floating teachers—by floating teacher, I don't know what you mean. What we mean is a teacher

that doesn't have a permanent room; she teaches in this room when this teacher has an off period, and she moves to the next room when the next teacher has an off period; there may be some of those, but it won't be necessarily whether it be colored or white.

Q. No, I was thinking about something like your speech therapist in your elementary school, they teach here and then they go to the other school. A. No; there won't be any of this.

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Q. I think in your deposition, sir, you mentioned that the funds for the athletic program of all schools, including the new school, must be raised; is that correct; and it is not provided by the Board? A. That applies to new and old.

Q. Yes, sir. Do you know what steps has been made toward raising funds for the band uniform and—and the athletic equipment for Jefferson Davis High School? A. I know nothing except what I have read in the paper, because that is a matter we leave in the hands of the principals or the band director and the coaches, and either through gate receipts and borrowing the money and paying it back later.

Q. Are you familiar with a meeting of persons from Montgomery at the Governor's House Motel where they met for the purpose of raising some funds for the new school? A. First I knew of it, I read it in the paper.

Q. It has been called to your attention? A. I saw it in the paper; yes.

Q. Do you know whether any Negroes were invited to that meeting? A. I could not say; I was not there.

Q. Do you know whether—has there not been additional meetings of interested residents who have been notified

and advised about meetings of the new Jefferson Davis High School? A. I am sure they have; there usually always is when we open a new school, they will get up money for things that the Board can't provide

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Q. Do you know whether any of these persons or any Negroes have been contacted or invited to participate? A. I do not know.

Q. Did you, in giving your instructions to your new principal, tell him that, "The school is going to be open, and all of your planning phases, we would like for all members of the community to be a part of it, including Negroes"; did you so advise him? A. We advised him and gave him—he has a copy of the court order that this—and we told him at this time that this faculty would be integrated.

Q. I am not asking you, sir, about the faculty; I am asking you whether you informed the coach—I mean the— A. We told him that his student body would be made up of freedom of choice and that he would know about it at the end of March.

Q. But did you inform him that in the planning stage where you were going to the people of the community, to invite some Negroes, too, to participate in the planning? A. I am sure that he—we—we left that up to him; we do not instruct him.

Q. You didn't give him any instructions about it? A. No, sir.

Q. All right; let's talk a moment, sir, about your coach. At the time you employed the coach for the new school, did you advise him that he should consider playing some formerly all Negro schools? A. No, sir.

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Q. Did you advise him that if he saw fit, so far as trying to get his team together, to—to consider Negroes? A. You mean Negro schools or Negro players?

Q. Negro players. A. We told him he would—anybody that went to Jefferson Davis School would—could go out for football.

Q. I am saying, did you particularly say anything to him about the racial problem because this is a problem? A. Well, he has been at Lanier; he knows all that this—he has been at Lanier, the new coach has been right there at Lanier during all this time.

Q. You saying you didn't tell him anything about it? A. We also told him that we could not solicit any players to exercise the freedom of choice and gave him a copy of the court order, that particular section about no official will have any influence on the choice a student makes in the schools they attend.

Q. Are you, sir, familiar with what has been reported in the newspaper that the city of Montgomery has been divided into three zones so far as eligibility of athletes going to Jefferson Davis? A. I have not heard that at all.

Q. Did you—you didn't read that in the paper? A. If I did, the paper was in error, if it was in the paper; I did not read it, but if it was in the paper, it was in error.

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Q. Do you recall anything at all or have you discussed anything at all about the eligibility— A. Yes.

Q. —of—of—of—of—of students who will attend Jefferson Davis High School so far as being on the team is concerned? A. Yes; we have discussed that.

Q. You discussed that? A. (Nodded to indicate affirmative reply)

Q. And wasn't something said in that discussion that if the students who were going to Jefferson Davis lived in a certain area—and there are zones of this—that was nearest to Jefferson Davis High School— A. It is not a zone.

Q. Well, let's—let's call it whatever you want; there was some geographical area that if the student lives in that area and wanted to go to Jefferson Davis, then he would be eligible to play on the team the first year? A. According to the Alabama High School Athletic Association, if he had attended Lee or Lanier, which are members of that association, he could not play at the new school the next year unless he lived closer to the new school than he did to the one that he was presently attending.

The Court: You mean the Alabama Athletic Association has the right to determine who is eligible to participate in school activities—

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Witness: They have the right—

The Court: —in the Montgomery schools?

Witness: They have the right in the athletics.

The Court: Who gives them that right?

Witness: Well, of course, it is a body of coaches, and I am not sure whether the principals are members. They say you got to make a certain grade to play; if you make under a certain grade, you can't play. If you are over a certain age, you can't play, or if you—we had down at Ramer this year, our—that team had a bad year up until this year, and it won nearly all the games, but they got thrown out because they played a boy that has been playing five years, and they can't play him but four years. That is the kind of regulations they have.

The Court: How do they penalize the school that doesn't adhere to their rules?

Witness: Well, they forfeit all their games.

The Court: Throw you out of the association, and they won't let you play any other team that belongs to the association; isn't that it?

Witness: I believe that is correct; yes, sir.

The Court: Well, maybe they ought to be a party in this lawsuit.

Mr. Gray: Yes, sir.

The Court: If they have that much authority over the operation of the schools in the athletic program.

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Witness: Now, in this matter, we had explained—

The Court: I gather it is authority that is just granted to them by the schools, themselves, though. Maybe they shouldn't have any standing in the lawsuit at all. I don't know. That just seems like it flies in the face of certain provisions in this court order for these schools to continue to belong to an association that is organized and operated strictly according to racial lines and the schools get penalized for playing schools that don't belong to an association that is predominantly of the same race; and at this point, I hold the school authorities responsible for seeing that it doesn't happen. I will go into that more in the order that I enter in the case.

Q. Do you know, sir, when this regulation was passed by the Athletic Association? I am sure it would have to have been passed after there was some question about the membership of the new schools in the association. A. As

I understand their rule prior to this was that if you started in a high school in a city, then you had to play out your eligibility in that high school, and, of course, there is always a lot of problems, pressure, about one group trying to get the boy to leave this high school and go to the other one. Of course, I know that is what they are trying to attempt; they are not trying to work on this other, I don't think, but in this particular case, I think they had maybe one other opening school, and they had an old rule that if he lived in that district, you could go

there, but now, they just—they made that rule, I think it was a month or so ago; I am not sure exactly how long.

Q. Now, let me ask this; is the Jefferson Davis High School already a member of the association? A. It is my understanding it is not.

Q. It is not a member; but it is governed by its rules and regulations? A. It is—it has—they have discussed being a member, and am sure they plan to be a member.

The Court: Of the white or Negro?

Witness: The Alabama—it is the white.

The Court: Well, why did they select the white before the students selected the school?

Witness: Well, they haven't actually selected it yet.

The Court: That brings me to another question; why do you select all white coaches before the students select the school?

Witness: Well, as was mentioned, one of the hardest jobs that we have in athletics is to raise the money to keep it going. We felt first that Mr. Livings who had coached on the Lanier staff for a good many years—

The Court: Why didn't you select a Negro assistant coach or maybe two?

Witness: We felt, Judge, that in this transition, we tried to work on this thing—

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The Court: I have gone along with this transition business for a good long while, but we have passed the transition period.

Witness: I understand that, but we felt that it would be better not to have them on athletics to start with and that we would—we plan to put—

The Court: This is not a new school system; this is just an addition to an existing school system that has been under an injunction for several years—

Witness: Yes, sir.

The Court: —to eliminate the dual school system. I am concerned about the conduct of the Board in permitting this to happen while they are under a court injunction.

Witness: Well, Judge, I—if I may say this, we have had a—a lot of problems we have had. Now, there is about thirty-two that have crossed over. We have had to put real close supervision; we had police protection for several weeks; we have gone in there and watched it, and we plan to start next year to desegregate all of the faculties in the city.

The Court: We are going to do that.

Witness: We want to do it peaceably, and I know you want it done that way, and where it will not be—

The Court: We are going further than that, I think, Mr. McKee. We are going to desegregate

some athletic programs, too, if they continue. Let's go ahead.

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Mr. Gray: We have no further questions.

The Court: Go ahead.

Cross Examination by Mr. Robison:

Q. Mr. McKee, in connection with this Athletic Association, is that association, as you understand it, similar to, say, the Southeastern Conference, requirement to be a member of the Southeastern Conference or the Atlantic Coast Conference, the Pacific Coast Conference, or any other—Southwest Conference, or any other football conference? A. It is similar to that; I don't know its—all their rules, but they—they have rules of eligibility and grades and how many players you can have and various things of that type.

Q. Do you know what the constitution or the by-laws of that association consists of; you are not familiar with that, are you? A. No, sir; I am not.

Q. Is it your understanding that if a school is to play other teams that are in the conference, they must belong to that conference? A. That is my understanding.

The Court: Where do they get—where do they get the authority to enforce this rule?

Mr. Robison: If the court please, I am not familiar with the constitution and by-laws, but I guess it would be similar to Southeastern Conference, just like Georgia Tech withdrew from that and don't belong to it; if they don't abide by those conference

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rules, then they withdraw from that association.

They set up, as has been said, certain rules and regulations with respect to eligibility of the individual players to play. It is my understanding, and we have only had an opportunity to briefly look into this, but it is my understanding, also, that there is no race restrictions within the association, of either association.

The Court: Well, why have rules?

Mr. Robison: The question?

The Court: Why have two associations if there is not—

Mr. Robison: Well, that, sir, I am not prepared, as I say, to answer those questions.

The Court: I suppose we will have someone here from that association?

Mr. Gray: Executive Secretary is here, your honor.

Mr. Robison: Of both of those associations, if the court please.

The Court: All right; go ahead.

Q. Mr. McKee, insofar as recruiting players at the Jefferson Davis High School or at any oher high school in the system, do you know of any recruiting that goes on to influence the choice of a student with respect to the attendance at a school to play football there? A. I do not know of any, and, of course, our people know that it is a violation both of the court order and of—a violation of the—either of the associations; I think both associations

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have the same rue in there about recruiting.

Q. To your knowledge, has any assignments or designation been made of any students to attend the new high

school, either by the principal or you or any official of the school system? A. No, sir.

Q. Is Lee and Lanier and Booker Washington, Carver, and all the schools that are in the Montgomery County system, they are under this court order, of course, are they not? A. Sure.

Q. And they are playing football at the present time? A. Yes, sir; they play in the fall.

Q. Sir? A. In the fall.

Q. In the fall; all right. Now, Mr. McKee, I want to talk about transportation just a moment. Is transportation available in a given area for a child to have an opportunity to attend—any given area to attend a school either predominently white or predominently colored? A. In the county; yes.

Q. In the county in any given area? A. That is correct.

Q. By choice, a child may be transported to a school of either race if they live within a given area? A. That is correct.

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Q. All right, sir. Now, in sending out the choice forms, did you designate last year the schools that were being transported or area that were transported? A. We had an asterisk by all schools where there was any transportation from certain areas of the county, I believe is what the footnote says—

> The Court: Let me interrupt you here: Now, on the new school, the Jefferson Davis School, will that also apply; will you give them an opportunity, say from Booker Washington to the Jefferson Davis School?
>
> Witness: We had not planned to have any transportation at Jefferson Davis.

The Court: Well, do you have transportation at Lanier and Carver?

Witness: At Lanier and Carver.

The Court: And you have it at Washington and Lee?

Witness: No, sir; we have it at Lanier.

The Court: Why haven't you planned to have it at Jeff Davis?

Witness: We had found that if you are going to try to go to four or five or six different schools, you are going to have the kids up so early in the morning to get there—they have to get up early enough as it is. At Lanier, we have this Vocational Agriculture unit which we figure a lot of the rural children want access to and have chosen because it is there; it is the only one I know of that is in a city.

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Q. In setting up your transportation, Mr. McKee, have you done it in mind so as to permit any—still any child in the county exercising a freedom of choice, to be able to go to a school minority—of a minority race? A. That is correct; and also, if he furnished his own transportation, he had the right to choose any other school if there was space available.

Q. What is the two-mile requirement with respect to transportation? A. The State will not reimburse you, or they don't pay it all, but they pay part of the cost of transportation for pupils that live over two miles from a school.

Q. Do you provide any transportation in the city of Montgomery? A. There might be some in the fringes or certain areas that at one time was out of the county and in the city, there might be in—little bit in certain edges, but basically, not any to amount to anything.

Q. And the two-mile area, if a child is within two miles of any given school, there is no allowance for transportation— A. That is correct.

Q. —is that correct? A. That is correct. In other words, if we were a separate city and county school system, like Jefferson County in Birmingham, we wouldn't have any buses. We would just have Montgomery city system. I don't think any of the city systems in Alabama

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have any buses, but we happen to be a combination, so we do for the county what the county school system would do, and try to do for the city what they do.

Q. In deciding which schools will be transported and which ones will not be a transported school, what factors do you take into consideration? A. Well, of course, we had taken into consideration space, and when possible, it's —we—we have had Capitol Heights Elementary for a good many years, it has been a transported school; Highland Gardens is a transported school, and Goode Street.

The Court: Are your four high schools transported schools?

Witness: Yes, sir.

The Court: What would it require you to do if—if the court ordered you to provide transportation to Jefferson Davis on the same basis as you provided it for your four existing high schools?

Witness: Well, it would mean, Judge, that a bus coming up the Wetumpka Highway, if—from that area would be very hard to get over there. It wouldn't present as much of a problem for the Carver or the Lanier thing, but it would present a problem of having another school to serve, taking

part of them into one and then going on to another one.

The Court: Go ahead.

Witness: And getting tied up in all that traffic,

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and it is terriffic.

The Court: Go ahead. Go ahead.

Mr. Robison: Excuse me.

Q. You do not propose to transport any whites or colored or any children at all to the new school under the present plan? A. That is correct.

Q. By comparison, what is the size of the new school at Jefferson Davis as compared with Lee or Lanier? A. Well, the new school, as it is at present, about somewhere between eight hundred and a thousand, depending on the subjects that they chose.

Q. And as compared with Lanier and Lee, would it be much smaller or comparable— A. Much, much smaller.

Q. —to it? Now, in determining—after the freedom of choice period, in determining the eligibility for attendance to the Jefferson Davis High School or Lee or Lanier or Booker Washington or any others, if there is an overcrowded condition, what is the only criteria that you use? A. When it is an overcrowded condition—

Q. Yes, sir. A. —is distance.

Q. Distance would be the only factor that you would use? A. Now, there is another point that I did not bring about the transportation; we have the feeling that there is going

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to be more space, and there are more white children involved, there are many more white children in that area being transported than there are colored children, and

that Lanier will more than likely have the space than would Jefferson Davis.

Q. Than would Jefferson Davis. A. See, it is a modern area which is pretty heavily populated with white people.

Q. Now, explain to me that, Mr. McKee, as to what you anticipate insofar as white vacancies or white children that will be transported to Lanier? A. Well, at present, there is some three hundred and fifty or more children transported to Lanier.

Q. And do you anticipate, with the opening of the new school, that it would affect materially the transported children to Lee or Lanier—I mean to Lanier? A. My—my honest opinion is that they would be caught in being turned down when you apply the court order that says those that live the furthest away.

Q. Who would be caught, Mr.— A. All the bus children if we were to send some bus children to Jeff Davis, because they would be the furthest away.

Q. They would be the furthest away. A. And I—

The Court: That is assuming that you have enough choices—

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Witness: Yes.

The Court: —to overcrowd that school?

Witness: I have a feeling with the new school there is going to be some choices—I mean going to be some people from all over town.

Q. Mr. McKee, in connection with choosing a new school, is the fact that it is a new school a faculty—a factor that would affect choices by anybody in the system to go to that school? A. I would think so. Especially tenth grade; it

is going to have a great effect on them; I am expecting a much larger tenth grade than any of the rest of them. A few seniors may stay where they are, but I am expecting a heavy enrollment in the tenth and eleventh grade.

Q. Now, Mr. McKee, in paragraph four of the motion that the Government has filed, this statement is made; "During the first grading period, defendants had approximately a hundred and fifty student teachers working in the Montgomery County system, none of whom were assigned to a position where their race was in a minority." Do you have any grading periods in—in student teachers? A. Well, that depends on the college that they attend; I presume they are talking about the time that they were there. Now, Alabama State is on a semester system, and they have some student teachers the first semester and some the second semester. Auburn is on a quarter system; they have some the first—fall quarter, the winter quarter, and the spring quarter. Troy is on a quarter system.

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Huntingdon is on the semester system. And, of course, we are doing this to help the colleges out. We would just as soon not have any student teachers, and sometimes we get so provoked with it that we think maybe we will quit fooling with it. But we know teachers have got to be trained, but it is a voluntary act on our part that we do, and we thought that starting off this fall, we had our hands full with the faculty changes, and then we started this modest change in student teachers; this second semester, we will probably—I don't know, we haven't seen the list yet, I haven't, it may be in—but we will have some Auburn students coming in in the spring, we may transfer some of those.

Q. At this particular time, Mr. McKee, in the school system recruiting of teachers and in selection of the faculty,

is this a very critical and crucial time in the school system's life to establish a—selected faculties? A. This is—this is a very critical time, because so many of our teachers that know today that they are going to resign, but they won't tell us, both races, and we can get better teachers right now than we could any other time, but if we don't have vacancies, we can't go out and hire a six thousand dollar teacher when you don't have a vacancy, so it is important now that—any vacancy that we do have that we be able to fill it. Now we are having a—still having—we have gotten a few more than I thought we would have been able to have gotten when we were in court before,

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white teachers to accept assignments in colored schools.

Q. Mr. McKee, are you also at this time visiting various colleges that—teachers' colleges and the universities of the State in an effort to screen teachers or to select teachers? A. In this area; we don't go up in North Alabama, but in this area; yes.

Q. And is that going on at the present time? A. That is going on at the present time.

Q. Mr. McKee, have you canvassed your teachers at this time to determine as best you can whether or not they intend to remain with the system? A. They have been sent a slip to sign; I believe it is to come back next week sometime; some of them are already, but I think they have until the end of next week to make up their mind.

Q. As to whether or not they intend to remain with the system or to leave the system? A. That's right; and if they say they are not, of course, we immediately try to fill that place. If they say they are not sure, you can't do anything about it until they get sure.

Q. On September 22, a report was made to this court

showing the faculty assignments at that time. Since then, since the filing of that report, what additional faculty desegregation has taken place? A. Well, at Lanier, the two student teachers have been added; at Lee, two student teachers have been added; and at Loveless, we have three

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white teachers—in fact, we hired four, but one of them quit, one of the white quit, and we replaced with a white, so actually, we have three there now, but we actually hired four teachers in that process to go to colored school. We have two white teachers at Paterson, and, of course, we have one more at Goode Street, and at Mac—it was really two more, because in our report to the court, we failed to count the principal which we had been counting in the others, and at McIntyre Junior High, we had two, but they were in there, I believe, when the court was there, Hayneville Road, one; and we have added a colored speech therapist that works in all schools, and then Mr. Garrett hired a white teacher to fill a place at Fews yesterday.

Q. And Fews is a—predominantly a colored school? A. Yes, sir. What we are—we have been working ever since school started that any vacancy that we had in the colored school, we have tried to fill it with a white teacher, and we have succeeded in every case except one. We was not able to fill that one. Then next year, we felt that we would start in the white school.

Q. What plans do you have insofar as desegregation of faculty is concerned in the next September system—semester? A. We plan to desegregate the faculties at all schools in the city. We did not—have not tried to put any colored teachers further in the white schools this spring, because we felt, communitywise, it would be better to do that all at one time, that is, where every school—every white—

former white school would have a colored teacher in it;

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then the community wouldn't say we did this to them—did this to us and didn't do it to them. We plan to start that; as soon as we get that, we plan to go around and just keep on until we get to where we have substantially desegregated faculties. We—we want to do it very carefully; we want those people in both races that transfer supervised very closely. Our supervisors are asked to stop by and visit those many times more than they do the other situation; they may not even be visited in that school; I have done it myself—if I pass one of these schools where we had faculty integration, I will go in there and watch in on those two rooms. We have tried to be so careful, that we not have an incident that cause a blowup here in Montgomery. Our school system is too important to us; it is too important to Montgomery. And we think that we are going to get this thing desegregated, and we are going to do it peaceably and keep our school system.

Q. Do you have any plans insofar as further faculty desegregation of the high schools? A. Yes; we plan to put others at high schools as vacancies and change arise. Another thing that we have done this year that I think has had a great effect and will help us in the future, we have had for a number of years what we call observation lessons where outstanding teachers will teach a lesson and other third grade teachers or other sixth grade teachers or other science teachers will come. This year, we have had those

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in both former white schools and in the colored schools. They have—sometimes they would have been taught by a colored teacher, sometimes by a white teacher. The audience or the teachers visiting these observations would be

made up approximately fifty-or sixty-forty or fifty-fifty, somewhere in that neighborhood, there would be some of both races; then at the end of the lesson, they would meet together and discuss the good points and the bad points of the lesson. And that was done integrated.

Q. Is that what you would refer to as an in-service program or instructional meeting? A. That is part of our in-service program; yes.

Q. Part of your instructional meetings? A. And we especially anxious to have some of our new teachers at that, because that gives them a chance to see a master teacher at work.

Q. With respect to the administrative council, what action has been taken by this Board? A. It has been completely desegregated.

Q. And what is the administrative council? A. It is when matters come up that meetings of principals, supervisors, and superintendents have to be held, it is held. We hold them either at Houston Hill School or at Lee High School.

Q. Is Houston Hill predominantly colored? A. Yes; it is.

Q. And Lanier predominantly white? A. Well, it is

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Lee High School.

Q. Lee predominently white? A. (Nodded to indicate affirmative reply).

Q. And those meetings are held at those two schools? A. (Nodded to indicate affirmative reply).

Q. What about your teacher institutes, Mr. McKee? A. They were completely desegregated.

Q. They have been completely desegregated? A. Members of both races taking part on the programs of the institute.

Q. Do you interview the teachers, Mr. McKee, or is that largely done by your associate? A. That is largely done by Mr. Garrett.

Q. Have you and Mr. Garrett discussed what would be said to these teachers that were being interviewed for employment with respect to the type of school system being operated in Montgomery? A. Yes, they have, and it is printed on the application blank, plus they are asked the additional question if they would accept a job, and Mr. Garrett has had the experience of some of them saying they would, and then when you offered them the job, they would say, "Well, I will let you know tomorrow," and they would go home, maybe talk to their husband, and some other people, and come back and say, "I can't take it."

Q. Have you all taken affirmative action to encourage faculty desegregation and, in the interviewing of pros-

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pective teachers, to encourage them to take assignments in schools where the opposite race is a majority? A. We have, and Mr. Garrett reports to me that in their visits to two of the colleges, they have some students that say that they will accept this, and we are going to certainly give them a chance to see if they meant it.

Q. What changes have been made to desegregate the student training program since the court order?

The Court: May I ask at this point, has your faculty assignment been on the basis of whether the teachers would agree to it or not up to this point?

Witness: Up to this point, and we hope, Judge, that we can keep it that way, because regardless, if it wasn't a racial problem, when you make somebody change to go somewhere to work that he is

not happy about, he is not going to do a very good job.

The Court: Have you read the orders—

Witness: Yes, sir.

The Court: —the courts have entered in these other cases that say that—

Witness: Yes, sir.

The Court: —that you cannot rely on voluntariness, it must be by assignment to accomplish the purpose of faculty desegregation?

Witness: I have read it, but I don't believe that that would keep the teacher from quitting.

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The Court: Well, if your teacher is not willing to teach in any school, and he is prejudiced to that point, you don't want that teacher in the system, do you, you are operating?

Witness: We have so many; we have so many.

The Court: Maybe this would be a good opportunity to get rid of them. Let's go ahead; let's go ahead.

Q. Mr. McKee, do you realize that the Board has the authority to assign a teacher to any school? A. We have the authority to assign them; yes.

Q. You also, as the Judge has asked you, realize that the assignments under the court order can be made irrespective of the desire of the teacher to teach in that school? A. That is correct; but I would hate for my child to be in a room with a teacher that did not want to be in that school.

Q. In the canvassing of your present teachers or in the interviews with present teachers and with the prospective new teachers, have you tried to determine which ones,

though they might not desire it, would accept a transfer? A. Yes; we have tried to determine that.

Q. Mr. McKee, have you solicited any funds or any personnel to raise funds in connection with the opening of the new school—high school? A. We have—we have hired the people, but we have not given them direction; they know that—they have been told that there would be no Board of Education funds for athletic equipment, band uniforms,

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and things of that type; there would be funds for library books, there would be funds for desks and teaching materials of that type.

Q. Does the Board of Education provide any funds for football uniforms or football equipment or basketball equipment or band equipment? A. No. That—those are what we call extracurricular activities; no child has to participate in them; it is purely a voluntary program.

Q. Mr. McKee, do you realize that under this court order, you have an affirmative duty to take positive action to desegregate not only the school students, but the faculty? A. Yes, sir.

Q. Have you attempted to carry out that order as best you were able and maintain a school system? A. We certainly have.

Q. Will you continue— A. We will continue—

Q. —to be—continue to be aware of that affirmative duty and take further positive action to desegregate the staff, faculty, and student body? A. We certainly will.

Mr. Robison: I believe that's all.

The Court: Redirect, Mr. Allen?

Mr. Allen: Just a few questions.

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Redirect Examination by Mr. Allen:

Q. You testified that all the schools—all of the high schools in the city are presently member—members of the —one of the two Athletic Associations; is that right? A. I think they are; yeah.

Q. And all the white schools are members of the white Athletic Association, and all the Negro schools are members of the Negro; is that correct? A. I think that is correct, yes, sir.

Q. And you have always permitted this? A. Yes; we have permitted it.

Q. Have you taken any steps to change it? A. No; I didn't—I didn't interpret the court order as about the Athletic Association.

Q. Now, you leave the scheduling of athletic contests up to the individual schools; is that right? A. Usually, it is —it is a mutual thing between the two schools that are going to play each other.

Q. Right; and the people who actually arrange the schedules are the principals and/or the coach? A. That is correct.

Q. Right; and they are employees of your school system? A. That is correct.

Q. Now, just one thing about this two-mile rule; I be-

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lieve the minimum program rules of the State of Alabama provide you with transportation money for those pupils who are transported, who are actually transported, who live a—greater than two miles from the school; is that correct? A. That is correct. I believe.

Q. It is not based on whether they live in or out of the

city; you get the money if they— A. Yes; but the point I made earlier, they don't give us enough money, so we don't feel that we can do it except in the rural area.

Q. Right; but it is— A. We could get some money toward it if we—but we wouldn't get all of it.

Q. Right; but they would count a student as a transported student— A. Two miles is all it says in there.

Q. That's right; even if he lived within the city? A. That is correct.

Q. Okay. A. But the Montgomery system could not afford to transport it on that kind of a basis—

Q. No. A. —not forty thousand kids.

Q. Does the Montgomery County system— A. Not that many would be two miles.

Q. Does the Montgomery County system operate solely

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with the minimum program funds? A. Well, we—we have several mills of property tax and one cent gasoline tax, and we get some federal funds; much of it is earmarked for special programs.

Q. But you do put a substantial portion of local funds into the school system? A. Well, I won't say substantial what we put, I guess about twenty-five—twenty or twenty-five per cent, we don't—we ought to have a lot more local funds than we have, but the last two elections, we tried to get the people to vote more taxes, and we were not successful.

Q. Do you hire teachers in excess of those allotted to you by the minimum program? A. A few; yes.

Q. Now, you testified that Jeff Davis would be probably much smaller than Lee and Lanier; would it also—what would the size be with relationship to Booker and Wash-

ington—Washington and Carver? A. Carver is larger, and Booker Washington would probably—Booker Washington running around eight, eight fifty, nine; Carver is thirteen or fourteen hundred at the present time.

Q. Are the four existing high schools in the city now overcrowded by your standards? A. Yes; I would like to have a little more space in all four of them.

Q. What was the reason for building additions to Carver

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High School, rather than making a larger school at Jeff Davis? A. The main reason there, we were building an auditorium which we had not—and we were building an auditorium, and while we were building the auditorium, it has a band room, and when we were approved for the R.O.T.C. unit, we put the riflle range and the R.O.T.C. room under the stage, it was a very convenient place to put it, and I believe there is a choral room, so actually, there is not much more teaching room there.

Q. Didn't you testify at your deposition that these additions out there, although they were not classrooms per se, would give you a—would be— A. Oh, yes.

Q. —give you a lot more room? A. You take the space where you were that you have—

Q. Right. A. —but the space in one or two of those places where they were, like at Lanier and at Carver, there is not a very good space, so that probably would be used for something else now than teaching.

Q. Just one other thing about the grading period; you do have a grading—in other words, your school system? A. Yeah; we send report cards out every six weeks.

Q. And you also have two principal grading systems, one semester—first semester and the second semester? A.

Well, it doesn't—really doesn't mean much; we give out report cards every six weeks.

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Q. When you testified at your deposition that you had about a hundred and fifty student teachers during the first grading period or the first semester, what does first semester mean, your first semester? A. The student teachers go by what their colleges had; Alabama State goes on semesters, and they will send us some student teachers at the beginning of their second semester. Auburn will send us student teachers at the end or the beginning of each of their new quarters, which may be even in the middle of a grading period of ours. Troy does the same thing. Huntingdon has semesters. Now, Huntingdon semester may be at a different date than Alabama State.

Q. Well, I understand that; but I am trying to establish measurement; when we say a hundred and fifty student teachers during a semester, we are talking about your semester, not the college's semester; now, is that—is that correct? A. Well, we have four, and I would think it would—there would be somewhere—I just don't know for sure how many there would be during this last semester, because Auburn hasn't sent theirs in for the last quarter, see, theirs haven't come in yet.

Q. Who is in charge of getting out the publicity for the new Jeff Davis High School? A. Nobody; they—the papers have been calling us; they want publicity on any kind of new school here; they just run us crazy asking when we are going to announce the coaches, when we are going

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to announce the school zones; we told the papers we did not have any school zones, we had freedom of choice; and

just about every day they call up, "When you going to do this?"—write a story of Jeff Davis. I see you have two or three in there.

Q. Do they get their stories from you or— A. They get some; not the one about the thing—about the Governor's House. They got a little information from me one time about when they had a picture of the building, but as far as the athletic program and that, they have not called me on that.

Mr. Allen: I have no further questions.

The Court: Mr. Gray?

By Mr. Gray:

Q. I think, sir, you mentioned that about the choice forms and on these choice forms there was indication about transportation; do you have available a copy of the choice form for the school year '67-68? A. No; I was not asked to bring one; I don't have it.

Q. You don't—you don't have one? A. It is just an alphabetical list of the schools and the address of the schools, with an asterisk by any that have transportation from certain areas of the county.

Q. Could you make a copy available for us? A. Oh, sure; we got plenty of them.

Mr. Gray: I think it would help the court, your

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honor, with leave of the court.

Witness: We have not made one for next year—

Mr. Gray: I understand.

Witness: —but we got one of last year's.

Mr. Gray: So that the record would be clear

exactly what it provides, I think if the court had a copy of the choice form for last year, it would help.

Witness: It is patterned right after the form of the court.

The Court: All right; if there isn't one now available, you may obtain one during the noon recess; that will be all right.

Witness: All right.

Mr. Gray: All right, sir; and we would like to at that time introduce it.

The Court: Go ahead.

Q. At the present time, are there any Negro teachers teaching on the elementary level in formerly white schools? A. No; we—we only desegregated the four senior high schools, started in the high schools, and then, as I said earlier, we started desegregating in the colored elementary schools, because we were able to find some white teachers that would take it; we have not found any serious objection from the colored communities. We have decided we would wait until next fall to start the desegregation of the rest of the city schools, and we could do all of it at once.

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Q. And no Negro junior high school teachers in former white schools? A. Nothing but the two senior high schools.

Q. Now, you testified about the observation schools that you had; now, were there any Negro teachers conducting observations in white elementary, junior high schools? A. No, they do their teaching of their own children, and the people come to visit them; I was at Carver this week when they had a demonstration there of a science demonstration—see, they are teaching their own children.

Q. Oh, and the teachers come in? A. The teachers come and visit.

Q. Now, have Negro teachers been invited to white elementary schools? A. Yes, sir; yes, sir; every one we have ever had, high schools, junior high, senior high, have been approximately fifty-fifty, sixty-forty, white and colored teachers—

Q. All right. A. —and approximately the same number of colored teachers have taught demonstrations as white teachers.

Q. I think one final question, sir; how was the name, Jefferson Davis, selected for the new high school? A. All —every request that I had—the only two requests that we had for names—and there was only one other one, the other one was Hank Williams, only two, everybody agreed Hank Williams—in fact, some of the kids nicknamed it the

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Green Lantern High School—

Q. I have no— A. —only official requests we had were those two.

Q. Who made the requests; are you saying this just was a community request? A. Well, we had letters and we had telephone calls and things like that.

Mr. Gray: I have no further questions.

A. Just individuals; it wasn't any groups that I know of.

The Court: Mr. Robison?

Mr. Robison: We have no further.

The Court: Do you have anything further?

Mr. Allen: No, your honor.

The Court: What is the—what is your student population this year in your Montgomery system, Mr. McKee?

Witness: Approximately forty thousand, not quite.

The Court: And what percentage of that is Negro?

Witness: About sixty-forty. However, this year, Judge, we have lost four hundred students, and usually we have been gaining from four to six hundred each year. I think there was some dropoff because of not knowing about assignments of faculty.

The Court: All right.

Mr. Gray: Just one other thing, your honor, if I may inquire, it will just take me one or two questions.

By Mr. Gray:

Q. You have a night educational program, don't you?

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A. Yes.

Q. At Lanier, Carver, Booker Washington— A. And Lee.

Q. —and Lee? Now, are there any Negro teachers teaching at the predominantly white schools at night? A. I don't believe there are.

Q. And are any— A. There might have been one quarter, I am not sure, I don't—

Q. —any white teachers teaching at night at your predominantly Negro schools? A. There could have been; I am not sure—

Mr. Gray: That's all.

A. —but it is open to anybody, and they have—all the students have been fully integrated.

Q. I was talking about faculty? A. I don't think there has.

Q. So nothing has been done to desegregate the faculty in your night schools, and these are special federal programs, are they not? A. Yes; but—

Q. With special— A. —they have been made up largely of the faculty within that school.

Mr. Gray: I have no further questions.

The Court: Anything else from this witness?

Mr. Allen: Your Honor, I have no further ques-

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tions, but I would like to state Mr. Robison has agreed that we will keep the record open to furnishing—so that we can furnish any additional documents which we need to identify the race of the substitute teachers listed on Exhibit 33, which is the principals' weekly reports.

The Court: How long have you gentlemen agreed to keep the record open?

Mr. Robison: If the court please, it was at his request yesterday, rather than make the copies, he served this on us, I believe, around three o'clock, wasn't it, Quaintance? And at that time, he wanted permission—as far as we are concerned, it is all right to make copies of these records; we have no objection to that. We just want our original records back.

Mr. Quaintance: Your honor, if it please the court, we had subpoenaed the application forms for substitute teachers, and Mr. Robison said that was a burden; I said if the court would agree, and if they would agree, we would agree not to require them to

answer that subpoena as far as those applications were concerned, because we might be able to establish race from these—from the substitute teacher lists from the prior years, and that was the extent of our agreement.

Mr. Robison: We will be glad to make them available to him for copying.

The Court: All right; not less than ten days from today.

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Mr. Allen: Yes, your honor.

The Court: If you are going to do it.

Mr. Allen: It will be less than that.

The Court: Anything else from this witness?

Mr. Allen: No.

The Court: All right, Mr. Lassiter; let's take a ten minute recess, please.

(At which time, 11:18 a.m., a recess was had until 11:27 a.m., at which time the hearing continued)

The Court: All right, Mr. Allen; call your next witness, please.

Mr. Allen: Mr. Garrett, W. S. Garrett.

William S. Garrett, witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. Would you state your name, please, sir? A. William S. Garrett.

Q. What is your occupation? A. I am associate superintendent of the Montgomery Public Schools.

Q. Would you describe generally your duties as associate superintendent?

The Court: We have already taken all that evidence; I am familiar with that.

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Q. Do you interview or do most of the interviews for teachers, new teachers, who are hired? A. Yes, sir.

Q. Do you ask them whether or not they would be willing to accept assignment to a position where their race is in the minority? A. For the last year and a half or so; yes. Most of them, I wouldn't say one hundred per cent, but the large majority of them, we do; yes.

Q. You don't ask all of them? A. Well, I would—I couldn't say that out of seeing fifteen hundred people, maybe, that I asked every last one of them that, but it is my intention to ask them that during the course of the interview, and we usually try to make notes on the application, their reaction.

Q. I will show you Government—a document marked as Government's Exhibit 2, the application for Edith Spring Marks, it states on there, "Would not accept integrated faculty"? A. Right.

Q. Did you write that on there? A. Yes, sir.

Q. Do you write something similar to that on each application? A. I try to do it; yes.

Q. Now, Government's Exhibit— A. Now, in some cases, where, for instance, we have gone to colleges to contact these people, that would have been—that answer or

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that reaction would have been written on a sheet of paper in a notebook rather than on the application, because we give them the application at that time to send in later.

So I wouldn't say that it is written on every application, but we try to get a reaction from every applicant; yes.

Q. If the applicant says no, they would not accept, what do you do then? A. What do I do?

Q. Right; what do you do with them? A. Well, sometimes I place them, sometimes I don't.

Q. Now, Government's Exhibit 2 through 32 that we have previously identified are teachers which have been hired since— A. Right.

Q. —September 1; and did you interview each one of those teachers? A. Yes.

Q. And of those who said that they would not accept a desegregated assignment, you did not place them in a— in a desegregated situation? A. That is correct.

Q. All right. A. Because these were new people, they applied for a job; they don't have to accept a job. We are in the market competing with other school systems for teachers; if we hired only those that said, "I will accept a desegregated situation," then at this particular moment, we would soon be out of business.

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Q. At the time you hired these thirty-one teachers, you had other applications on file, did you not? A. Right; they were considered among others; yes.

Q. About how many other applications did you have on file? A. Oh, of teachers that are actually available, I couldn't say.

Q. Well, could you give an estimate? A. Well, maybe as many as fifty or seventy-five, but not necessarily in particular subject matter area or specialty that was needed.

Q. All right. A. We might have, say, a surplus of art teachers, three or four or five, six art teachers and no vacancies, and might have one science opening and not have but one teacher that is qualified.

Q. Now, you were present at the taking of Dr. McKee's deposition, were you not? A. Yes, sir.

Q. And at that time, we brought together a group of applications for students—or for teachers who had applied to your system since September 1— A. Right.

Q. —who were not hired— A. (Nodded to indicate affirmative reply)

Q. —and you had—did you compile—count those and compile those? A: There was somebody in the office did it; I don't remember precisely how many there were; I am sure it is in the deposition, probably, but as I pointed out,

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most of those are for teachers who will be available next year, not now, not this year.

Q. And this fifty or so that you just mentioned, that is in addition to those, are people in addition to those who applied for a position next year; is that right? A. Well, if you are talking about total teacher applications, I imagine that we have maybe from fifty to seventy-five who would actually be qualified and be currently available. Now, they might be perfectly available next year, but I can't hire them today if I need them if they are not going to be available until next year; many of these people are teaching in other school systems.

Q. But you had those available at the time you hired these thirty-one teachers? A. Well, I had them—the applications; they were not necessarily all available is what I am trying to get over to you. Most of them were not available, of the ones you looked at, as I pointed out, most of them were not finishing college until May of '68, and consequently would not be available to teach until next fall.

Q. Did you interview Mrs. Louise E. Jackson? A. Yes, sir.

Q. I will hand you document marked as Government's Exhibit 29; did you write this on it? A. I certainly did, and that is one of the reasons I selected her; I think she will make an excellent prospect next year to desegregate

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a school with, and that is what I have in mind—

Q. She— A. —to transfer her to a white school, previously white school.

Q. She is a Negro teacher— A. Yes, sir.

Q. —and she, this year, was assigned to Booker Washington? A. Right.

Q. Which is an all Negro school? A. Right; and as Mr. McKee has already testified, we were not attempting, this school year, to get into the area of assigning colored elementary teachers into previously white elementary schools, because we wanted to do it all in one fell swoop next fall.

The Court: You categorize elementary school one to nine or one through nine?

Witness: One to six.

The Court: One through six?

Witness: Yes, sir.

The Court: And then the junior high—

Witness: Is seven to nine, and senior high, ten to twelve.

The Court: All right.

Q. I will now show you document previously identified as Government's Exhibit 36, substitute teacher list. A. Yes, sir; now, this is this year's substitute teacher list

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which, Judge, is alphabetized without regard to race. I could not, for the life of me, determine who is white and

who is colored. We interview these people; if they appear to—that they are available and would make good substitute teachers, I send them in to my secretary, she has the health certificates and the other red tape connected with employment done, and they are placed on a master list and sent out to the principal. From time to time, additional lists are sent out in the same category alphabetized without regard to race.

Q. I will direct your attention to this notation by the name of Nina Rust Fraser, it says, "Lanier and Lee"; what does that mean? A. Now, we—you will run across that in many cases. We have some teachers, substitute teachers, who, because of transportation, lack of transportation rather, family circumstances, sometimes small children, that will limit themselves to two or three surrounding schools, that is their only interest, that is the only place that they would be willing to teach. Therefore, we put that on there. Here is one up here that says, "Retarded Children School"; this lady is interested in substituting and will not substitute anywhere except for the retarded school.

Q. That requires some kind of special training, doesn't it? A. She has had the—Mrs. Camp is—has a—I believe a retarded child or related closely to a retarded—

Q. How about this one that says, "Flowers only"; does that mean she will only accept— A. That is the only ele-

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mentary school she will go to, is Flowers only. Of course, that limits the number of times she will be used. She might not be used hardly any because of that, but she may not have a car at all, but she could help at that one school and can't help at any others; that is really not any regard to race.

Q. Do you see any reason why a teacher should be allowed to limit herself to, say, Lee and Lanier and not teach

at Carver? A. Yes, sir. Just like following your reason, I could see a lot of good reasons why this person ought to be allowed to limit herself to the retarded school only. Now, understand this; these are people who more or less volunteer to come in and serve as substitutes. We need them. And we take them for whatever number of schools they can teach or for whatever number of days they can help us with; they don't have to help us at all.

Q. Have you given the principals any instructions as to calling teachers on a desegregated or nonracial basis? A. We handed them this list in an integrated meeting when all the principals and supervisors were available. If we didn't actually give them the list at that time, we called it to their attention that it was coming out, and we told them that they were free to use anybody on that list that they could get to come on a given day. Now, a lot of times, a principal will call three or four different teachers on that list before they will get one whose family situation or whose bridge

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game schedule or whose beauty parlor schedule or club meeting schedule will permit them to work that day.

Q. Is that all the instructions you gave them, that they were free to use whoever they wanted to use? A. Right. There it is with as much qualification as we know how to put on a small sheet like that, and they were told to use any and everybody on there that they cared to use or that they could get. Many times not a question of what they care to use, but a question of who they can get that is available.

Q. What efforts did you make to insure that the principals were not discriminating in who they called? A. I cannot—and I just say this now—monitor fifty something schools and fifty something principals to see who they are

calling for substitute work. These emergencies come up oftentimes at seven forty-five to eight o'clock in the morning; the teacher gets up in the morning, she thinks, "Well, I will go to school today." She gets dressed, and maybe she's got intestinal flu or something; at the very last minute they will call. The principals struggle to get anybody there on time, and I cannot and don't attempt to try to monitor this thing. Now, I have—just in routine visits around the schools, I have observed some teachers of the opposite race teaching or doing substitute teacher work, so there has been some of it going on.

Q. Do you have access to the principals' weekly report that gives the name of the substitute teachers for that week

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on it? A. I could get them; yes.

Q. Do you ever make spot checks to see if there is any pattern on that particular person? A. No, I have not; I have many other duties other than this, and I have a small amount of help, just one secretary. Public school funds are limited, and we just do the best we can do, and I have made no attempt to try to monitor or enforce or to try to do this substitute calling, myself. It can't be done; too big a scale.

Q. Prior to the 1967-68 school year, what was your procedure with regard to placing of student teachers? A. I don't have anything to do with that.

Q. You don't have anything to do with it? A. No, sir.

Q. Beginning the fall of 1967, you didn't help in placing student teachers? A. No, sir.

Q. How many teachers ultimately do you estimate will be assigned to the Jeff Davis School for 1967-68 school year? A. For this coming year?

Q. Yes, sir. A. Well, that is anybody's guess. Depending on who chooses—how many chooses—whether or not—

but I would say that I would certainly hope that not more than eight hundred choose; that would be an optimum number to open up school with. And consequently, you can

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divide twenty-five into that; that is the present pupil-teacher ratio for senior high school pupils; that would give you the number of teachers. What—that would be forty, wouldn't it, if there were that many pupils? Now, this is rough; you have got to give or take a few teachers.

Q. How many teachers do you estimate you will have in minority situations this coming year? A. For the school system?

Q. Right; regular classroom teachers? A. Well, we have about thirty-five now. We are going to attempt—our plan is to try to get at least one into every junior high and every elementary, and then start—once we accomplish that, start around with the second one and the third one and so on, rather than to have three in one school and none in another.

Q. Well, based on your— A. Roughly speaking, a minimum of—with thirty-five already there, we have fifty schools or thereabouts; I would say about a hundred or better.

Q. Based on your— A. I think that is practical; I believe we can accomplish that.

Q. Based on your prior experience in hiring new teachers and placing new teachers, how many teachers do you estimate that you will hire who will be new to the system this fall? A. Well, now, of course, that varies from year to year. It will depend on the number of resignations, num-

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ber of deaths, the number of retirements.

Q. Well, how many did you hire last year, approximately? A. I would assume maybe a hundred.

Q. You will hire about a hundred new teachers this fall? A. Now, that—I don't—by new, you mean replacements, I assume—

Q. Yes, sir? A. —new to us, but not added positions, but replacements?

Q. Yes, sir; right? A. I would say between now and next fall, perhaps a hundred.

The Court: And does that include the—the new teachers, too, or just replacements?

Witness: No, sir; I think that would be everybody, Judge.

The Court: All right.

Witness: We are not growing in pupil-teacher—in overall numbers of pupils in our school system as we once were; a few years back, it took fifty additional teachers in addition to replacements for us to stay staffed, but that situation has stopped; we have leveled off, so it will be mostly replacements.

Q. As part of your duties, have you been given the responsibility, primarily, of carrying out faculty desegregation? A. Well, the superintendent has delegated the recommending of the best faculty members that I can come by, and desegregation is a large—our faculty is a large part of my responsibilities; not the only one, but that has

been discussed and—with the Board and with the superintendent, and we have a plan to accomplish this, have been working on it all the year.

Q. Well, under your plan, when do you estimate that faculty desegregation will be finally accomplished in terms of the objective of the court order removing— A. Well,

now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of. It says that you will have reasonable desegregation of faculty and that you will strive toward having each faculty not recognizable as being staffed for a particular race. That is what I get out of it.

Q. Well, let— A. So I—I can't—this court order is in fairly general terms; I can't answer that question.

Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished? A. Well, that would depend on what the Board's definition of that is, of the court's definition of that.

Q. Do you have a definition of that? A. Not at this point; we have discussed that many times, and I do not have a definition of—of what that would mean.

Q. No one has told you, given you a definition in terms of mechanics, in terms of numbers, none of your superiors?

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A. No; as far as I know, no other school personnel man in America has. I have talked to many of them. What we are striving to do is to make progress and keep going and hope that somewhere along the line we will have achieved the—what the court has in mind. But if you will look at that court order, you will see it doesn't lay down the precise terms exactly what that means; it is a broad definition.

Mr. Allen: I have no further questions, your honor of this witness.

Mr. Gray: Mr. Garrett—

The Court: The court order requires at least one teacher or not less than two teachers in every school in your system—

Witness: (Nodded to indicate affirmative reply.)

The Court: —of a race opposite that of the majority of the students, doesn't it?

Witness: Yes, sir.

The Court: That is pretty precise, isn't it?

Witness: Oh, yes, sir; but he was asking me about the ultimate, I thought.

The Court: All right; let's go ahead.

By Mr. Gray:

Q. Your honor—I mean Mr. Garrett, with respect to—you have heard testimony here this morning from Mr. McKee to the effect that there has been no attempt to have Negro teachers on the elementary school level in formerly

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white schools? A. Yes; yes.

Q. Now, was—is there and did you follow this rule, too, with respect to substitute teachers? A. No; we just published a list on substitute teachers and sent them out to all principals.

Q. No communication was— A. They were told they were free to use anybody on this list.

The Court: I don't believe that is sufficient at that point; I believe you had a duty and obligation, Mr. McKee and Mr. Garrett, to tell those principals that they are not to hire substitute teachers on the basis of race and not—and if you tell them they are free to hire anybody they want to, that is not sufficient; it is just not adequate at all; they are to select them without regard to race or color, and you are under a duty to tell them that, and you are under a duty to see they do it. So just to tell them they can hire any-

body they want to is not sufficient at all; that is not compliance with the order. Let's go ahead; that is just a minor point in this thing, but it's—it is something that the order requires you to do, and it is evident that you are not doing it.

Witness: May I—

The Court: Sure.

Witness: —make a comment? I don't know the race of these people on this list, and I don't hardly see how a principal could. That was why I told them that. I mean, I thought we had a list that was fairly foolproof as to determining who was who.

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The Court: Well, I haven't examined your list, but I just heard you identify it. You give their addresses, don't you?

Witness: Yes, sir; but—

The Court: And you give other identifying data on that list, don't you?

Witness: Like what?

The Court: Well, I don't know; I haven't seen it yet, but I just heard you identify it.

Witness: All in the world it has is a name and address and the number of years that they attended college, so they would know whether they were a college graduate or so on, and then the subject matter, area in which we think they are the most proficient.

The Court: Well, I take it all of your principals have, through the years, had experience in hiring substitute teachers?

Witness: Calling them.

The Court: Sure.

Witness: We do the hiring.

The Court: And they know, when they are called, if they have had experience in hiring them before, why they are calling, don't they?

Witness: Well, now, the list changes from year to year.

The Court: I know, but if you have Jane Doe and

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Sarah Roe on there, and they have been substituting for several years, they know when they call Jane and Sarah who they are?

Witness: Oh, yeah.

The Court: Well then, you can't tell them they can call anybody they want to; you have to tell them they must call without regard to racial considerations; that is the point I am making.

Witness: Sure.

The Court: It just violates the court order. Let's go ahead. That is a minor point in this entire picture, but—

Mr. Gray: Yes, sir.

Q. One other minor area. A. All right.

Q. Mr. Garrett, I think you indicated that you do make notations on the application as to whether or not they will accept integrated situations; if they will, you assign them there. Now, I call your attention to the bottom— A. No, sir.

Q. —to the bottom of the first page of your— A. I didn't say that; I didn't testify to that.

Q. Oh, I— A. I said I made a notation as to whether they would or would not at this moment accept a desegregated situation.

Q. All right.

The Court: Said he did that on most of them.

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Witness: That's right.

Q. Then— A. But I don't necessarily hire them for that, because I may not have an opening at that point.

Q. I understand. There is a provision on your application which says at the bottom of the page, "Pursuant to federal court orders, you are hereby notified that the Montgomery County School—Schools operate on a racially desegregated basis, and the members of its staff are subject to assignment in the best interests of the school system without regard to race or color of a particular employee"; in view of this statement on your application, what then is the purpose for you going into this question of race with them? A. For the simple fact that we, of course, have been trying to actually promote with each person that we interview the idea of accepting an assignment in a minority situation.

Q. So it really serves no useful purpose, if you don't abide by it? A. Yes, sir; it serves a very useful purpose, because it helps us in planning. I have had some applicants —well, some that I interviewed last week—that said, "Well, I would have no religious or moral or any other reasons for not accepting an assignment in a previously colored school, but I would prefer not to do it my first year"—

Q. Does— A. —"that I have got so many adjustments

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to make." All right; I try to make a note of that, because I assume we are going to be in this for a good while. I make a note of that so that I will have that person tagged maybe for year after next. This is a continuous thing.

Q. Does that provision on the application mean what it says? A. Down at the bottom?

Q. Yes, sir? A. We have legal authority—that has been testified to before; I would assume that we have legal authority to just up and transfer a teacher regardless of her wishes.

Q. I was talking about new employee, a new teacher, that is what we are talking about on the application? A. Well, now, a new teacher has to accept whatever you are going to offer her.

Q. That's right. A. Right.

Q. And if she accepts what you offer when you have that statement on it; then it means by filing the application she or he is available to go anywhere you send them? A. No, sir.

The Court: You are getting off into an area of argument.

Mr. Gray: No, sir; I am through, your honor.

Witness: No, sir; that is not what it means.

The Court: All right, Mr. Robison.

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Cross Examination by Mr. Robison:

Q. Mr. Garrett, did you notify the principals of all the schools that race was not to be a factor in selecting substitute teachers? A. Yes, sir; I am positive we made that statement—

Q. Did you— A. —but—

Q. —at teachers' meetings and other meetings— A. Other times.

Q. —notify the faculty or the principals that race was not to be a factor in the selection of substitute teachers;

the principals, were they notified of that? A. As they call—

Q. As they call them? A. Yes; and not only that, we have discussed and furnished them with a copy of the court order.

Q. You have given to each principal a copy of the court order and then have instructed them that in the selection of substitute teachers, race was not to be a factor? A. Yes, sir.

Q. As a matter of fact, from your observations in visiting certain schools in this system, have you seen substitute teachers of a minority race teaching in schools where the pupils were of a majority, opposite race? A. Yes, sir.

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Q. In the preparation of your last substitute list, Mr. Garrett, did you purposely leave off the school of graduation of these substitute teachers so that that would not be a means of identifying them as one race or another? A. Yes, sir; we did that.

Q. In the present substitute list that you are using this year, is the only information on there the name, address, telephone number, the graduate—the educational qualifications, and any preference that they might have as far as schools are concerned? A. Subject matter area at their grade levels that we think they are proficient in and a few limitations that they, themselves, can't help, but in certain number of schools because of family situation, transportation, and so on.

Q. In the addresses that are located—show the location of some of these teachers, is it impossible to determine from the address the race of the substitute teacher? A. Well, definitely, there are many streets in Montgomery that one part of it there are white residents, and a few blocks

later, there are colored residents. There are many of them that are across the street from each other. I, myself —and I have been in this business a long time—could not—and I would—am under oath—I could not go down that list and pick out a white and colored teacher to save my life.

Q. That is all of them; is that correct? A. I could pick

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out some, I think; yes, sir; but I certainly couldn't pick them all out.

Q. All right. Now, in the substitute list as it is compiled, are there carry-overs from year to year on the substitute teachers' list, or are new names added from time to time? A. About the middle of July, we call everybody that is on the present list and ask them if they would like to serve again. Some say no; some say yes. Those that say no are stricken off; those that say yes, we fill out the additional information, health certificate, and all that, and we alphabetize that list along with the new ones that are interested and put out another list for the following year.

Q. Mr. Garrett, it has been—or you have been shown an application of a teacher that is presently employed where they say they will not accept assignment in a school of the opposite race; at the present time, do you have, to your knowledge, several teachers in this system that have said they would not at this time accept employment in a school where the children are of a race predominantly opposite from theirs, who have stated that after their first year or two years teaching in this system, would be willing to transfer? A. Yes, sir.

Q. Do you have, in the course of your planning for further faculty desegregation in Montgomery, have those students—or those teachers with that information available to you for transfers at a later date? A. Yes, sir.

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Q. Is it your plan and the plan of the Board of Education that every school in this system in the city at this time would have a desegregated faculty of one or more teachers commencing in the September term? A. Yes, sir.

Q. Is it also in your planning that the number of teachers in the high schools—that the desegregation in the number of the teachers in the high school will be increased beginning in the fall term next year? A. Yes, sir.

Q. How do you plan, Mr. Garrett, and in your planning with Mr. McKee and the Board, to increase the number of teachers teaching in schools where the children are predominantly of the opposite race? A. Well, we have—we think, have done a good bit of groundwork, background work, this year by bringing teachers of the opposite race together, sometimes in a previously colored school, sometimes in a previously white school, in the observation lessons and in discussion. We plan and are hopeful that we will have a number of summer institutes this summer where teachers of all the races will be together working in this institute for the improvement of certain areas of instruction, both technique and content of the curriculum. Now,

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that is background-creating climate that we think will be very helpful. During the course of all of my interviews with college graduates, fresh college graduates—and we go to Alabama State and Alabama College and Troy and Huntingdon and so on and have a—spend the day and interview prospective teachers—in the course of that, we discuss very frankly with every one of them the fact that we are attempting to desegregate faculty in the Montgomery public school system, and we encourage them to agree to accept an assignment where a majority of the

children are—teachers are of another race, and what I have observed has been very encouraging to me. I have been to two colleges thus far, and, while the number that agreed that they would like to have—like to try that has not been as many as I wish it were, it has been rather encouraging.

The Court: What you are saying is that you don't find the extent of prejudice in the younger new graduates—

Witness: Yes, sir.

The Court: —that you do in the old ones?

Witness: Right.

The Court: All right; I understand.

Witness: While we are talking informally—

Mr. Robison: This is not very informal, Mr. Garrett.

Witness: Well, if I might say to the Judge, oftentimes a little bit of maturity, though, makes them much more adaptable in actually accomplishing it and carrying it out in a successful manner; I don't

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mean too much maturity, but a reasonable amount of experience, teaching experience, is real helpful in carrying out an assignment in a minority school.

Q. At the present time, is—at the moment, is this a crucial time with respect to the employment of faculty for this system— A. Yes, sir.

Q. —into next year? A. Yes.

The Court: My understanding, now, you are going to have this next year teachers of the minority race in every school in your system?

Witness: As far as humanly possible.

The Court: And how many do you expect to have in your—in your elementary schools, a minimum per school?

Witness: Two, at least.

The Court: And how many in your junior high, your minimum?

Witness: Two; maybe more.

The Court: All right.

Witness: Depending on what we come—

The Court: Now, let's go to percentages; what percentage do you expect to have in your high schools?

Witness: I just don't know. We haven't actually discussed that up to this point. I—I couldn't say.

The Court: Well, your race—your student popu-

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lation is sixty-forty?

Witness: Yes, sir.

The Court: Ultimately, that will be your optimum if you are going to eliminate the racial characteristics of your school through faculty—

Witness: (Nodded to indicate affirmative reply)

The Court: —wouldn't it? It would have to be.

Q. At—

Mr. Robison: Excuse me, your honor.

The Court: (Nodded to indicate affirmative reply)

Q. At the present time, the faculty—ratio of students in this system is approximately sixty-forty at the present time, is it not? A. Yes, sir; it is awful close to it.

Q. Do you understand, Mr. Garrett, that you are under the affirmative duty to desegregate the faculty of this school system under this court order, that you have an affirmative duty to desegregate faculty in the Montgomery County school system? A. Yes, sir; along with whatever authority I have delegated in these matters by the Board of Education and the superintendent.

Q. Do you state to the court that, within the authority which you have as associate superintendent of education, that you will discharge that affirmative duty that is on you to desegregate the staff of this system in line with the preparation that you have already made? A. Yes, sir;

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we have been working diligently toward it.

Mr. Robison: I believe that's all.

Redirect Examination by Mr. Allen

Q. Mr. Garrett, I believe you testified when I was examining you that you were going to have at least—at least one in each school, or am I wrong on that? A. I said we would try to start with one in every elementary school and then come back around with two, and if we were successful, maybe three; I don't have any preconceived notion about maximums, but I would rather have these distributed rather than to have three, say, in one school and none in another.

The Court: I understand that.

A. That is what we are after, I mean—

Q. Now, as to these substitute teachers you said you have seen, how many have you seen? A. Well, now, I don't

visit in the schools as much as some of our people; I don't —I don't—frankly don't have the time. I used to be able to visit more than I have this year. But I have seen several, I would say four or five, and I have heard reports, though, from other school personnel that have seen others that I didn't see, so I would assume there has been some going on.

Q. Do you have any way of knowing— A. I don't know how many; I wouldn't—I don't have any way in the world to know.

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Q. Do you have any way of knowing whether these reports that you have heard are the same teachers that you saw, yourself? A. I don't think so, because in some cases, it would be in a different school and on a different day from when I saw them, but I would assume it was a different case.

Q. Four or five is what you have seen? A. Yes; but I haven't visited the schools this year; I want to hasten to point that out.

Mr. Allen: That's all, your honor.
The Court: Mr. Gray?

By Mr. Gray:

Q. I think you said, Mr. Garrett, that at present, your teacher ratio is sixty-forty; you mean sixty per cent white and forty per cent Negro; right? A. (Nodded to indicate affirmative reply)

Q. Now, is it the intention of the Board to have this type of ratio in each school? A. I just do not know. We have not discussed things that far; we are trying to meet immediate goals.

The Court: Anything else from this witness?
Mr. Allen: I have nothing further, your honor.
The Court: Mr. Robison?

Recross Examination by Mr. Robison:

Q. Mr. McKee, in the selection of substitute teachers or

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in the employment of teachers, is the particular qualification of that teacher insofar as her ability or her ability to teach Spanish or a particular subject—

The Court: I will take judicial notice of that.
Mr. Robison: All right.
The Court: Anything else?
Mr. Robison: That's all.
The Court: Do you have anything else from this witness?
Mr. Allen: No, your honor.
The Court: All right. Let's recess until one thirty, Mr. Lassiter.

(At which time, 12:06 p.m., a recess was had until 1:30 p.m., at which time the hearing continued)

The Court: Your next witness, Mr. Allen.
Mr. Allen: Call Mr. Jack Rutland.
Witness Jack Rutland: Yes, sir.

JACK RUTLAND, witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. Would you state your name, please, sir? A. Jack Rutland.

Q. What is your occupation? A. I am a junior high

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school principal.

Q. Have you accepted an assignment as principal to the Jeff Davis High School which will be opened next fall? A. Yes; I have.

Q. When did you first—when did you accept that assignment? A. About August, was a year ago.

Q. Were you approached by personnel from the Montgomery County Board of Education to accept this position? A. Yes; I was.

Q. You didn't ask them for the position; they came and asked you; is that correct? A. That is correct, sir.

Q. Have you been consulted about the assignment of additional personnel at Jeff Davis High School this fall? A. We have talked generally.

Q. Well, thus—so far, you have assigned a principal's assistant; isn't that correct? A. Sir, assignments are made through our Board of Education, superintendent; I do not have jurisdiction there.

Q. Did anyone from the Board of Education talk to you about the assignment of a principal's assistant, a coach, two assistant coaches, and a band director? A. Yes, sir; we talked.

Q. Did you make recommendations? A. Yes; I did.

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Q. Were the people who you recommended appointed? A. I believe most of them were or I agreed to it.

Q. Did you discuss other people as possible—possibly filling these positions? A. Yes, sir; we did.

Q. Were they all white? A. I believe, thus far; yes, sir.

Q. Have you made any efforts to compile a list of teachers to recommend for appointment or assignment to Jeff Davis High School next fall? A. Yes, sir; I have in a general way; I have thought about good teachers from all over the system from every area.

Mr. Allen: I would like the Clerk to mark this as Government's Exhibit next in line.

The Clerk: Government Exhibit number 38 for identification.

Q. I will show you a document which has been marked as Government's Exhibit 38, and ask you if you would identify that, please, sir? A. Those are my notes concerning teacher prospects, some of whom I would like to get if I can talk my associate superintendent into it. As I stated, that is not my responsibility, but I do try to get the best.

The Court: Your associate superintendent—

Witness: Mr. Silas Garrett, Judge.

The Court: —who is that? Did I understand you

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to say they had an associate principal?

Mr. Allen: Well, I understood that they have—there will be a principal's assistant or someone or an administrative assistant who will also teach this —coming from your school; isn't that correct?

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CARD 14

Witness: That is correct; we call them principal's helper, and he will teach and help in the office some.

The Court: Has that position been filled?

Witness: Yes, sir.

The Court: Three assistant coaches been filled? —

Witness: Two assistant coaches, sir.

The Court: (Nodded to indicate affirmative reply)

Q. And one head coach— A. That is correct.

Q. —is that correct?

Mr. Allen: I would like to offer this document into evidence as Government's Exhibit—

Mr. Robison: We have no objection,

The Court: It will be admitted.

Mr. Allen: —38.

Q. Approximately how many—

The Court: Let me see it.

Q. —Negro teachers have you actually talked to about— A. I have talked to no teachers, Negro or white.

Q. Is it part of your responsibility as the new principal

of Jeff Davis High School to organize the extracurricular program for the school? A. Yes, sir; that is true.

Q. And what have you done to—thus far, to organize this program? A. I have accepted the aid of about five businessmen who have come to me from time to time since I have been nominated and who have told me that they would like to help me get started; they understand this is the system in Montgomery County. The School Board, of course, provides the instructional material and equips

the building, but extracurricular activities or programs are handled by subscription from the public.

Q. Is Mr. Tranum Fitzpatrick the chairman of this—of this group? A. Yes; he is.

Q. Did he organize and conduct a meeting at—in the last week— A. Yes, sir.

Q. —in order— A. Yes, sir.

Q. Where was that meeting held? A. The Governor's House Motel.

Q. About how many people were there? A. About seventy-five.

Q. Were any Negroes there? A. No, sir.

Q. Are there any Negroes in your group of businessmen who are helping to organize the extracurricular program?

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A. No, sir; we didn't have any to volunteer, but we were looking for help from all quarters.

Q. What have you done to find Negroes? Negroes— A. I have done nothing to find Negro or white; they have come to me.

Q. How far have you gone in toward raising money for extracurricular activities? A. You mean how much money, sir?

Q. Well, how much equipment have you bought? A. I do—I cannot answer that; we have ordered some equipment for spring training; my coach has ordered some equipment; I do not have a tally on that.

Q. Have you already purchased the football equipment? A. Some of it.

Q. You have already selected the football uniforms? A. That is correct, sir.

Q. Have you already selected the band uniforms? A. Yes, sir.

Q. Who did the selection? A. The coach helped me with the football, and the band, I did mostly on my own; of course, I had some—some advice from several people. I had this uniform on a mannequin in my home, and several people saw it and liked it and accepted it.

Q. All right; did any Negroes see it and accept it and like it? A. They have had an opportunity to see it in yesterday's paper and also on television several times; I am sure they did.

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Mr. Allen: I would like to mark this as Government's Exhibit 39.

The Clerk: Government's Exhibit 39.

Q: I will show you document which has been marked as Government's Exhibit 39, and ask you if you would identify that, please, sir? A. In what manner, sir?

Q. You just mentioned a picture in the newspaper; is this the picture that appeared in the newspaper? A. Yes, sir.

Q. How did that picture happen—strike that. Is that you in the picture in the center? A. Yes, sir; that is correct.

Q. How did this picture happen to be made and placed in —in the newspaper? A. On one day this week, Mr. Sam Adams, who is a news writer for the Advertiser-Journal, a local newspaper, called me at my school, Goodwyn Junior High School, and asked me if I would have such a picture made.

Q. Where did you get the students who are modeling these uniforms? A. I called a colleague who is a junior high school principal; I did this because I did not want

to in any way influence—abiding by the court order, I didn't want to influence a child in any way to choose my school, so I did not—have not ever seen those two boys before that day.

Q. Well, the principal you called was the principal of

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Cloverdale Junior High School— A. That is correct, sir.

Q. —which is a predominantly white school? A. I believe that is true, sir.

Mr. Allen: I would like to offer this into evidence as Government's Exhibit.

Mr. Robison: I have no objection.

The Court: It will be admitted. Why didn't you get one Negro and one white student for that?

Witness: Judge, I didn't select them, myself, so I don't—

The Court: Well, you used them—

Witness: Yes, sir.

The Court: —and you got the man that did select them?

Witness: Yes, sir.

The Court: Why didn't you get one of each if you didn't intend to create the impression it was going to be a white school? Let's just get right down to the nub of the thing; why didn't you get one of each if you didn't intend to create the impression it was going to be a white—

Witness: I didn't do it to create an impression at all.

The Court: Of course, that has that effect, doesn't it?

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Witness: That is one interpretation, sir; it is.

The Court: Sure. Sure it is, where you are going through a period of trying to desegregate a previously dual school system, where you establish a new school in the system—

Witness: Yes, sir.

The Court: —immediately before your freedom of choice period—

Witness: Yes, sir.

The Court: —that is an obvious effect, isn't it?

Witness: That is the Judge's interpretation, sir.

The Court: What is yours?

Witness: My interpretation is I am trying to abide by the court order; I would assume that because the school, located geographically where it is, probably predominantly of the white race.

The Court: You understand we don't have geographical school districts here—

Witness: No, sir, not—

The Court: —yet. Yet. I call your attention to this copy of Franklin County Board of Education in North Carolina case where Judge Butler wrote this opinion—I think it is excellent law—where he ruled with the Board of Education for two or three years on freedom of choice and kept having things like this, and they never did do anything; he just put them strictly on the geographical basis on the theory that freedom of choice didn't work. And it looks like that is where we are headed here in Mont-

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gomery if we don't stop stuff like this. Go ahead.

Q. Referring to the picture that was just identified, it states in the cutline under the picture that the students from Cloverdale Elementary will be eligible for—to attend the Jeff Davis High School; where did the reporter get that information? A. I don't know, sir.

Q. Did you tell him— A. Of course, if I may add, sir, that all junior high school students in Montgomery will be eligible under the freedom of choice.

Q. Did you tell the reporter that, that all— A. No, sir; I didn't tell him that.

Q. There have been other—there has been other publicity surrounding the opening of the Jeff Davis High School; isn't that correct? A. Yes, sir.

Q. Have you talked with the newspaper reporters on other occasions about Jeff Davis High School? A. Yes, sir; I have. I gave an interview, and you have that information, I believe with Mr. Massey and my material.

Mr. Allen: I would like to mark this as Government's Exhibit.

The Clerk: Government's Exhibit number 40 for identification.

Q. I will show you the newspaper clipping marked as Government's Exhibit 40, and ask you if that is the clipping

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which you were just referring to? A. No, it is not; the clipping I am referring to has a picture of the school under construction; it has a by-line of Massey, I believe, sir.

Q. Well, is—was this newspaper—particular newspaper clipping—strike that. Was this story made up as a result of an interview with you? A. I don't believe so. I

believe that is—as it says here that I was making a speech before a civic club, and I think he picked it up from there, sir.

Q. When was this speech that you gave to the Montgomery Rotary Club? A. Sir, I don't recall that.

Q. Approximately? A. Three weeks ago.

Q. Was Billy Livings, the assistant coach, present there? A. Yes; I believe he was.

Q. Did he also speak? A. I believe we had a question and answer period, and I believe he answered the questions.

Q. Did either you or Mr. Livings say that most of the football players from Lee and Lanier High may join the Davis team if they reside near the new school? A. I don't believe we did, sir. If we were—we were probably misquoted; I can't tell until the freedom of choice who will come from where.

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Mr. Allen: I would like to offer this as Government's Exhibit 40.

Mr. Robison: If the Court please, we would object to the introduction of that; it has not been properly identified nor is it shown that it reflects his comments.

The Court: I sustain it; I sustain objection.

Q. Is part of your duties as new principal making up the athletic schedules for the coming year? A. Yes, sir.

Q. Have you made up the athletic schedules for—say the football schedule? A. I have for football.

Q. Have you worked on the basketball schedule? A. No; I have not.

Q. Is anyone else working on the basketball schedule? A. Yes, sir; assistant coach Charles Lee is doing that.

Q. Did you make most of the contacts to make up the football schedule for this fall? A. Yes; I did.

Q. You scheduled ten games; is that correct? A. That is correct.

Q. And these are all with traditionally white schools? A. All of them, I assume, would be integrated schools under the court order.

Mr. Allen: I would like to mark this.

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The Clerk: Government's Exhibit number 41.

Q. I will show you the document marked as Government's Exhibit 41, and ask you if you will identify that? A. That —that is correct; that is our football schedule.

Q. Is Montgomery County High traditionally a white school? A. Yes, sir; I believe it is predominantly white.

Q. Are any of these other teams, any of these schools on here, not traditionally white? A. I would not think so; I do not know what their enrollment would be; I would think that they would be predominantly white.

Q. Well, I didn't say predominantly; I said traditionally white schools? A. I do not know the answer to that.

Mr. Allen: Well, I would like to offer this as Government's Exhibit 40.

Mr. Robison: We have no objection.

The Court: It will be admitted.

Q. Did you contact the administrators of schools in addition to those and attempt to set up your football schedule?

A. Yes, sir; I contacted several administrators, and some I was able to schedule and some not.

Mr. Allen: I would like to mark this as Government's Exhibit.

The Clerk: Government's Exhibit number 42.

Mr. Allen: 42.

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The Court: Has your school joined the Alabama Athletic Association?

Witness: No, sir; not yet.

The Court: Have you made arrangements to do so?

Witness: We have not formally applied, but we have—

The Court: How do you know what teams to schedule if you haven't made arrangements to do so?

Witness: I selected schools from the list of the Alabama High School Athletic Association.

The Court: All right; that is what I want to know.

Q. I would like you to look at the document marked as Government's Exhibit 42, and tell us what that is? A. I have never seen it before in my life, sir.

Mr. Phelps: That is your basketball coach.

Witness: That is my basketball coach's information.

Mr. Allen: I beg the court's pardon.

Witness: He put his in my file as we were going out to lunch, and, of course, it is all together.

Mr. Allen: I will identify this with the next witness, your honor.

The Court: All right; let's get along.

Mr. Allen: I would like to mark this.

The Clerk: Government's Exhibit number 43.

Mr. Allen: I believe you better make them A, B, and C; there are three papers there.

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The Clerk: Government's Exhibits 43-A, B, and C.

Q. I will show you Government's Exhibit 43-C, and ask you what that is? A. This is stationery that is drawn up by the steering committee listed here; these are the people who are raising extracurricular funds for Jefferson Davis High School.

Q. These are the people listed along the letterhead here? A. Yes, sir.

Q. I believe you already said that those are all white? A. Yes, sir; that is correct.

Q. Or did you—okay. And I would like to show you Government's Exhibit 43-B, and ask you if you can identify that? A. That is a brochure drawn up by this committee to present to donators, which includes the proposed budget, of course.

Q. What is this on the front, this first page? A. This is a proposed crest drawn up by a ring company; that would go on the rings or stationery or what-not; it is a symbol we use. We do not have a mascot yet; the children are going to select that. We needed something to be flashing; that is what that is.

Q. Who designed this? A. This particular drawing here?

Q. Yes, sir? A. I imagine an artist from Josten Ring Company.

Q. Well, I show you Government's Exhibit 43-A, and ask you if you identify that? A. That is a letter to me

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from Mr. Milo B. Howard, Jr., who is director of the Department of Archives and History, in which I, I believe by telephone conversation, asked him if he had materials on Jefferson Davis. I became interested in Jefferson Davis when I was named principal of Jefferson Davis High School and began reading about Jefferson Davis, and that is what that is.

Q. Did he send you information that could be used in making up this design? A. Yes; I believe the Confederate Seal was also included in that letter described which has a picture of George Washington on a horse on it, by the way.

Mr. Allen: I would like to offer these as Government's Exhibits 43-A, B, and C.

The Court: It will be admitted.

Q. Is transportation provided to the Goodwyn School? A. Yes, sir; from certain areas.

Q. From what areas? A. These areas are designated in the court order; I believe you would describe it as Chisholm area, Boylston area, North Montgomery, Atlanta Highway, Bell Road, North Montgomery.

Q. Is there any reason that you can see, based on your experience in supervising transportation at Goodwyn, why transportation should not be provided to the Jeff Davis School? A. I don't think that that would be a decision made at my echelon of experience.

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Q. Well, the question is, is there any reason— A. Sir, I don't believe I could intelligently answer that; I don't know all the implications.

Q. Well, as principal of Goodwyn, you are in charge of transportation there? A. Yes, sir.

Q. Do you anticipate any problems at Jeff Davis that would be different from the problems that you would have in transportation at Goodwyn? A. Oh, no; those of us who have been in transportation know that you have problems always with transportation, but they are all of the normal nature.

Q. Are they going to be different at Jeff Davis? A. Sir, I couldn't answer that, not having any experience in that area.

The Court: Wasting a lot of time, Mr. Allen; let's get along.

Q. Do you anticipate hiring another secretary at your— at Jeff Davis next fall? A. This would depend on enrollment.

Q. Have you already made contacts with prospective secretaries? In— A. I have talked to one secretary, the one I have had for seven years.

Q. How about others to fill an additional secretary job?

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A. No, sir; I haven't. I haven't made any contacts; I have several letters of application, and I only talked to those people and answered questions who asked me questions.

Q. Do you know whether those people that you have had contact with are all white? A. No, sir; I do not know; some of them have written me, and I do not know.

Mr. Allen: I have no further questions, your honor.

The Court: All right; Mr. Gray, Mr. Seay?

By Mr. Gray:

Q. Mr. Rutland, in—just so I am sure I understand, in preparation of your athletic schedules— A. Yes, sir.

Q. —all of them— A. (Nodded to indicate affirmative reply)

Q. —both football and basketball— A. (Nodded to indicate affirmative reply)

Q. —you made most of the contacts; is that correct? A. In future years, I assume that the coach will make the contact, Mr. Gray. This year, since I had no one but myself, I did it.

Q. Now, did all the people you contacted—were they white or colored? A. The people I contacted were white people.

Q. All right. Now, with respect to approximately how many clubs or social groups, et cetera, have you talked

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with about this—about Jefferson Davis High School? A. Approximately how many?

Q. Yes, sir? A. Approximately six or eight, seven—six or seven.

Q. Six or seven? A. (Nodded to indicate affirmative reply)

Q. And have all of these people you have talked with, have they been white or colored? A. That is correct; those are the ones who invited me; I speak where I am invited; yes, sir.

Q. Now, have you taken the initiative in—in—in preparation for the opening of this school, have you taken the initiative to contact anybody about anything concerning the school? A. I would—I—I don't recall specifically contacting anyone about anything; in general way, of course,

I have had conversations with many people about opening of the school.

Q. Have you contacted any Negroes at all, either principals of schools, teachers in schools, or anyone else concerning any plans or asking them for suggestions or letting them know that you would like their assistance so far as Negroes are concerned? A. The only way there is on committee work, and in the committees on which I have worked, of course, I have colleagues who are Negroes, and I have talked to them in a general way, but not specifically about Jefferson Davis; no.

Q. So you haven't talked to any Negroes at all about

Jefferson Davis? A. That is correct.

Q. Now, are you familiar with the proposed eligibility of football players at Jefferson Davis for this fall? A. Yes; I am.

Q. What rule and regulation has been adopted so far as who will be eligible? A. Those people who have established eligibility at the Lee and Lanier High School and who live closer to Jefferson Davis High School will be eligible to attend Jefferson Davis High School.

Q. Now, who passed that rule and regulation and adopted —who adopted that regulation? A. That rule was adopted jointly, I think between myself and the superintendents and Mr. Bubba Scott of the Athletic Association.

The Court: Only Lee and Lanier High School?

Witness: Well, Judge, under the court order, of course, anyone who is going from a—from one school desegregated for the first time, of course, would be eligible, so it wouldn't be any need to include other

high schools in Montgomery. If I interpret the court order correctly, sir.

The Court: Let me hear that rule again?

Witness: The eligibility rule is that if a student has established eligibility in Lee or Lanier High School, if he lives closer to Jefferson Davis High School, he would be eligible to participate in athletics.

The Court: Is that white or Negro in Lee or Lanier?

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Witness: Yes, sir; I don't think there is any distinction.

The Court: All right; go ahead. Would he be eligible to participate the first year in athletics at Jefferson Davis?

Witness: Yes, sir.

The Court: All right. What if he is from Carver or Ramer or—

Witness: I believe, under the court order, if he were in one of those schools, sir, he would be eligible, as the court order states, because he would be going into—into a desegregated situation for the first time, and he would be eligible. That is my interpretation of the court order, sir. That is why Lee and Lanier—

The Court: I think that is a proper interpretation. The court order doesn't state that, but I think that is—that is a valid interpretation of the order, that you cannot deny eligibility to—to one going to a school of the opposite race for the first year.

Witness: That is my understanding, sir.

The Court: I think that is right. But if you had Negroes at Lanier or/and Lee, I don't see why you just restrict it; that is to keep them from pirating players from—

Witness: That is correct; we have overzealous parents, of course, Judge.

The Court: I understand, I understand; go ahead.

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I think that is a proper interpretation of the order as I have given it to Mr. Scott. It is not spelled out in the order by a long shot, but I did tell Mr. Scott, and this is for the record, and I guess this is where this comes from; I told Mr. Scott they could not deny eligibility to Negroes that elected through freedom of choice to go to a former white school, even the first year. I guess that is where that rule came from; go ahead.

Q. May I show you Government's Exhibit 43-B, and you say this is the proposed—what is it? A. Crest; that goes on a class ring and so forth.

Q. Now, did you supply to the company that designed that crest the information that is contained on it? A. No; I asked them to design a crest, and their company, which is in Owatonna, Minnesota, came up with this crest.

Q. You—did you send them any information at all? A. I sent them a copy of the Confederate Seal.

Q. All right; did you also send them a copy of the Confederate flag? A. No, sir; I think there are plenty of those available throughout the country right now.

Q. Now, Jefferson Davis High School, the proposed crest has on it a Confederate Seal; is that right? A. Yes, sir.

Q. Which has, "The Confederate States of America"—
A. Right.

Q. —and above that, it has a Confederate flag? A.

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That's right.

Q. Sir, couldn't that be interpreted by Negroes as being designed to discourage them from attending that school?

Mr. Robison: If the court please, we object to the form of that question.

The Court: I sustain it.

Mr. Gray: We have no further questions.

The Court: Mr. Robison, Mr. Phelps?

Mr. Robison: Yes, sir.

Cross Examination by Mr. Robison:

Q. Mr. Rutland, you have been asked about the court order and your interpretation of that order; do you recall, in a discussion on yesterday when we were talking about this court order, having been read a portion of the existing court order— A. Yes, sir.

Q. —"A student attending school for the first time on a desegregated basis will not be subject to disqualification or waiting period for participation in activities and programs, including athletics"; do you—has that been read to you? A. Yes, sir; that was—

Q. All right, sir. Now, Mr. Rutland, what are your qualifications as a teacher or principal of this school? A. I hold a Master's degree in the school administration from the University of Alabama. I have been elementary principal

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for six years; I have been a junior high school principal for ten years; and I organized Goodwyn Junior High School ten years ago with five hundred students.

Q. You have been with this system approximately twenty years; is that your testimony? A. About nineteen years; yes, sir.

Q. And you have been a teacher and a principal in this system? A. That is correct, sir.

Q. You organized one of the junior high schools, one of the larger junior high schools in this system; is that correct, sir? A. Yes, sir.

Q. You were contacted, then, by Mr. McKee and Mr. Garrett with respect to becoming principal of the Jefferson Davis High School; is that right? A. Yes, sir; yes, sir.

Q. You have been asked regarding a clerk that you have out there, or helper that you have out there at the present time; is that person also going to be a teacher? A. Yes, sir.

Q. You have, also, a coach, two assistant coaches; is that correct, sir? A. Yes, sir.

Q. And the band leader? A. Yes, sir.

Q. Is there any other staff at Jefferson Davis H.

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School or faculty members that you know have been employed? A. That's all.

Q. Now, you have been questioned regarding—and I believe that it's Government's Exhibit—let me have that sheet of paper there, please—Government's Exhibit 38, Mr. Rutland, is that a list of teachers that you have given consideration to for employment at Jefferson Davis? A. In my own mind, sir.

Q. Do you have the final say-so, or do you have the final word, with respect to employment of teachers in your school? A. No, sir.

Q. As a matter of fact, since you have been principal at the present school, have teachers been employed and sent

there that you had no knowledge of or any dealings with prior to their assignment? A. That is correct; this has happened.

Q. On this proposed list of teachers that you have given consideration to, are there any teachers there of the colored race? A. Yes, sir.

Q. Approximately how many do you have on that list who are of the Negro race? A. Six or seven, I don't remember.

Q. And how many is the total number you have on that list? A. I do not know that.

Q. Would you mind counting them, Mr. Rutland? A.

Thirty-one, I believe, sir.

Q. Thirty-one? A. Yes.

Q. Where, Mr. Rutland, did you get those names; how did you compile that list of names? A. From word of mouth, teachers of mine who had been to observation meetings which we hold where we observe good teachers, and we send other teachers into certain schools, and my teachers have come back and told me that they saw a certain teacher doing a real fine job and that they—I put them on my list. I am looking for good teachers.

Q. That is your teachers at Goodwyn— A. Yes, sir.

Q. —is that correct, sir? A. Yes, sir.

Q. Have been to schools that are—faculty is predominantly of the opposite race and have came back and told you of such and such a teacher that is a good one— A. Yes, sir.

Q. —that is of the opposite race in instances— A. Yes, sir.

Q. —is that correct, sir? A. Yes, sir.

Q. Where they have been to those schools for teacher observation courses; is that correct, sir? A. Yes, sir; yes,

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sir; that's right.

Q. Is athletics or band a part of the curriculum of any school that you know of? A. It is extracurricular, sir.

Q. Is it a part of the required curriculum of a school? A. No, sir; it is not required.

The Court: Well, let's get on; do you consider it essential to the operation of the high school in Montgomery, Alabama, on competitive basis with Lee and Lanier?

Witness: Yes, sir.

The Court: All right.

Q. How is such activities financed? A. Activities of this kind are financed by moneys raised by citizens, civic clubs, possibly governmental agencies who make donations.

Q. Is that also true of Lee and Lanier? A. Yes, sir; that is true of all high schools, I suppose.

Q. And is that also—is it also true that basketball, football, and band is an extracurricular activity at Lee and Lanier? A. Yes, sir.

Q. Have you contacted any individual or any group, civic club, or association on your own to solicit funds or ask assistance for the financing of the extracurricular activities at Goodwyn—at Jefferson Davis High School? A. No, sir; I have not.

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Q. Have you contacted any individual with respect to setting up meetings or any civic club or group to set up

meetings to help finance it? A. No, sir; I have not contacted anyone.

Q. You have been asked about a meeting that was held at the Governor's House Motel; did you set that meeting up? A. No, sir; I did not.

Q. Do you recall or do you know who did set it up? A. Mr. Tranum Fitzpatrick, who is chairman of the steering committee of Jeff Davis High School activities committee.

Q. Did you have anything to do with the setting up of the Jefferson Davis High School activities committee; did you solicit this organization to be set up? A. Yes; I did. Ultimately, as a result of their volunteering to help me.

Q. As a result of their volunteering to help you? A. (Nodded to indicate affirmative reply)

Q. This Jefferson Davis High School activities committee was set up? A. That is correct.

Q. You were issued a subpoena duces tecum here and brought certain clippings? A. Yes, sir.

The Clerk: Defendants' Exhibit number 1, 2, Defendants' number 3, Defendants' number 4, Defendants' number 5.

Q. Did you, Mr. Rutland, make a statement here with

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respect to a nicknaming of the school? A. Yes, sir; I believe so.

Q. Do you know who wrote this article? A. No; I do not.

Q. All right. Did you grant any interview by—to a Mr. Walter Massey? A. Yes; I did.

Q. Do you recall when that interview was? A. No, sir. On January 18, 1968.

Mr. Robison: We would like to offer that in evidence.

Mr. Allen: No objection, your honor.

The Court: What number is it?

Mr. Robison: Plaintiffs'—Defendants' Exhibit number 2.

The Court: It will be admitted.

Q. Did you grant an interview to a Mr. Travis Wolfe? A. No, sir; I did not.

Q. Did you grant an interview to a Mr. Gene Diefendorf? A. Diefendorf; no, sir.

Q. Did you grant an interview to Miss Judith Helms? A. No, sir.

Mr. Robison: We are not offering those.

Q. In the interviews that you have given and the speeches that you have made, have you stated in there that this school would be opened on a freedom of choice basis? A. That is correct, sir.

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Q. Is it your understanding that your students will come there based on a freedom of choice? A. Yes, sir.

Q. You have been asked about the selection of a crest and colors and so forth of the school? A. Yes, sir.

Q. Is it necessary that the selection be made at this time and a determination be made of the crest and so forth of the school? A. No, sir; I might point out, sir, if I may, this is not an official crest of the school at this point.

Q. It is not an official crest? A. That's right.

Q. The colors that you have, have they been made official yet? A. Yes, sir.

Q. You have been asked about certain uniforms that have been ordered for both the football and the band; have they —have you got funds on hand to pay for those now, Mr. Rutland? A. I do not.

Q. The athletic equipment and the band uniforms that have been selected by you, who was with you in the making of that choice, or who determined that choice? A. Coach Bill Livings was in on the choice of the football uniform.

Q. All right, sir. A. On the band uniform, no one, sir; I did this, myself.

Q. Why did you have to select these uniforms at this

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time? A. Uniforms have to be selected at this time in order to get delivery by fall.

Q. For the football season in the fall? A. Yes, sir.

Q. You stated on direct examination that you were not a member at this time of the Alabama High School Athletic Association; is that correct, sir? A. That is correct, sir.

Q. Have you an application form for membership? A. I believe I do.

Q. Do you know what the requirement is for membership in that association? A. Yes, sir; I believe I do. I believe the requirement is that a school must be accredited by the State Department of Education.

Q. That the school must be accredited by the State Department of Education? A. Yes, sir; I believe that is true.

Q. Is the Jefferson Davis High School accredited at this time by the State Department of Education? A. On a tentative basis, I am sure, only if we meet certain standards when we open school.

Q. That was my question; when is it final; when will it be finally determined whether or not you are accredited by

the State of Alabama? A. After we have had an evaluation.

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Q. Would that be at the time you open? A. I believe at the time I open, that the State Department will give us accreditation on the basis that we have at that time met the standards and that we will agree to an evaluation and go through all the necessary steps to permanently be accredited.

Q. But you cannot adjoin—you cannot join the Alabama Athletic Association until you have been accredited by the State of Alabama; is that correct, sir? A. That is my understanding, sir.

Q. Now, the teams that you have scheduled, are they teams of the Alabama Athletic Association? A. Yes, sir.

Q. If you are not a member of the Alabama Athletic Association, can you play any teams that are members of the Alabama Athletic Association? If you do not belong to the Alabama Athletic Association, can you play any teams that are members of the Alabama—

The Court: Sure, if they are willing to play him, but if they are members and they play him, they are subject to be kicked out; that is the way I understand the rule; they can't punish him if he plays them. If he can get them to play him, all right; but the Alabama Athletic Association has a rule, if I understand it correctly, that if one member team plays a team that is not a member, then they get put out. Is that the way you understand it?

Witness: I am not firm on that, Judge; I just don't know.

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The Court: All right; don't we have the rules of the Alabama Athletic Association here?

Mr. Robison: Sir?

The Court: Don't we have the rules of the Alabama Athletic Association here?

Mr. Gray: We have a handbook here, your honor.

The Court: Don't they have that rule in them?

Mr. Gray: I am not sure; I just got it this morning.

The Court: All right; I guess Mr. Scott is here, isn't he?

Mr. Gray: Yes, sir; he is here.

The Court: All right. No member team can play a non-member team?

Mr. Phelps: If the non-member team is qualified, as I understand, to become a member.

The Court: Well, they may do that?

Mr. Robison: Yes.

Witness: That is correct there, I know.

The Court: They may do that; this is the manner in which they have exercised control.

Q. Mr. Rutland, so far as you know, are those teams that you have scheduled to play on your football schedule desegregated schools? A. Yes, sir; I assume they are, since they are schools of Alabama and since most of us, all of us, are under the—a court order of some kind.

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Q. On last year, did you see the Lanier-Tuscaloosa High School game? A. No, sir; I did not.

Q. You did not. Did you see the Lee and Tuscaloosa High game? A. I believe I did, sir; I saw so many football games, I can't remember.

Q. Do you remember that game in which at that time the football team of Tuscaloosa High was predominantly of the Negro race? A. Yes, sir.

Q. Mr. Rutland, do you understand that, as principal of the Jefferson Davis High School, that you are under a court order to take affirmative action and to encourage desegregation of the student body and the faculty? A. Yes, sir; I understand that.

Q. Will you do that to the best of your ability? A. Yes, sir; I will.

Q. Have you, in any way, attempted to influence the choice of any student in the Montgomery County system to come to your school? A. No, sir.

Mr. Robison: I believe that's all.

The Court: Redirect, Mr. Allen?

By Mr. Allen:

Q. In connection with your athletic program at Jeff Davis, you plan to have spring football practice? A. Yes; we do.

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Q. When will that start? A. March 2.

Mr. Allen: I would like to mark this as Government's Exhibit.

The Clerk: Government Exhibit number 44.

The Court: If the choice period runs from March 1 to March 31—

Mr. Allen: Yes, sir; that is correct.

The Court: —how do you start a spring practice March 2?

Witness: We are going to ask football players to commit themselves on March 1, to bring the choice sheet back to us.

The Court: How are you going to do that?

Witness: Well, we are going to ask them to bring it back, and I believe those who are interested in spring training and football—

The Court: You are going to circularize the football players at Lee and Lanier?

Witness: They will go to every student in Montgomery County.

The Court: Every student?

Witness: Yes, sir; every—choice form will go to every student in Montgomery County on March 1.

The Court: How you going to get the football players to bring them back in on the 1st of March?

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Witness: We have had this in the paper, and we will have other advertisements of this, so every child in Montgomery will have an opportunity to make his choice, and if he is eligible to play he can play.

The Court: Go ahead.

Q. I would like for you to identify Government's Exhibit 44, please, sir? A. This is a mimeographed sheet drawn up by coach Bill Livings—

The Court: What number is it?

A. —describing spring training, I believe—

The Clerk: 44.

A. —spring training at Cloverdale School.

Q. Was—who circulated this? A. That has not been circulated generally. This, I believe, has been in the paper.

Q. You mean this particular thing was printed in the paper? A. No; that—information from that particular thing, not that particular thing.

Q. Well, why was it printed up? A. I don't have any idea why we printed that up.

Q. Well, who has seen this? A. I believe this was handed out at the meeting we had at the Governor's House for the gentlemen who were helping raise money to try to get them to realize that we needed to get on with it by March 1.

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Q. And I believe you already testified that there were only white people at that meeting.

Mr. Allen: I would like to offer this in evidence as Government's Exhibit 44.

The Court: It will be admitted.

Mr. Allen: I have no further questions, your honor.

The Court: Who selected Cloverdale Community Center as being the place that the players that want to play at Jeff Davis are to report and get measured for uniforms?

Witness: I did.

Mr. Gray: Your honor, I just have a couple of questions.

By Mr. Gray:

Q. I think you said this crest is not official; is that correct? A. That's right.

Q. Is it on the band uniforms? A. No; it is not.

Q. Is it on the football uniforms? A. No; it is not.

Mr. Gray: That's all.

Recross Examination by Mr. Robison:

Q. Mr. Rutland, did you invite anyone to the meeting at the Governor's House? A. No; I did not.

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Q. Why did you select or why was the site of Cloverdale School selected as a place for this practice? A. Cloverdale people volunteered the services of their facilities and their field at this time, and it was nearby the Jefferson Davis High School.

Q. Is it in the vicinity of where your Jefferson Davis High School would be; was that the reason for it, proximity? A. It is probably the closest junior high to this field, and in the event we would have our field developed in time, we could move over easily, you see, from there. Our field is under development at this time.

Q. In the last Government's Exhibit, you require or you ask in there for both the parent and the student to exercise their selection of a choice; why did you do that? A. We did that—of course, as you know, the court order says that, I believe, a child fifteen years old may make a choice, but we did this there again to keep down any recruiting or any wish-washing and changing; we want the child to make the commitment as far as athletics is concerned so he would not have a tendency to go back to one of the other schools; if he makes his commitment with us, we feel that he ought to stay there.

Q. So you have asked both the parent and the child— A. That's right.

Q. —to exercise their choice? A. That's right; that's right; sometimes it gets tough the first two or three days,

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and they want to change; we want to make sure that once they make their choice, they stick with it.

Mr. Robison: I believe that's all.
The Court: Anything else from this witness?
Mr. Allen: No, your honor.
The Court: All right; call your next one, please.
Mr. Allen: Call Jimmy Hughes.

WALTER JAMES HUGHES, JR., witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. What is your occupation? A. Student at Lanier High School.

Q. Which one? A. Student at Lanier High School.

Q. Lanier? A. (Nodded to indicate affirmative reply)

Q. What grade are you in? A. Tenth.

Q. Where did you go to junior high? A. Bellingrath Junior High School.

Q. You play football, or did you play football at Lanier? A. Yes, sir.

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Q. Did you play football at Bellingrath? A. Yes, sir.

Q. Have you also played basketball at both of these schools? A. Yes, sir.

Q. In that connection, have you become acquainted with Mr. Charles Lee and Mr. Billy Livings— A. Yes, sir.

Q. —coaches? Mr. Lee is the coach at Bellingrath; is that right? A. Yes, sir.

Q. Have you had occasion to talk to either of these men about the new Jefferson Davis High School? A. I have.

Q. Would you tell us what conversations you had with coach Lee? A. I have only talked to coach Lee one time, and that was on my own accord; I went to see—visit his wife, who was in the hospital at the time she had her first child, and I asked him how things were going at the new school, and—I mean at—at Bellingrath, and I asked him what the colors were going to be for the new school, and he told me, and that was about the extent of our conversation. That is the only conversation I have had with him.

Q. How did you know that he was going to be at the new school? A. It was announced in the paper.

Q. What conversation have you had with coach Livings? A. I have had three conversations about the new school with coach Livings. The first one was very brief; I just asked him what his—what they were going to do over there

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and tried to find out some information about when spring training and when other facilities would start there, and, of course, at that time, he didn't know. It was just after he had been announced, and so he told me to ask him later if I still wanted to know or something, and I waited.

Q. Did you ask him later about spring training? A. I did; I came to him during study hall one afternoon and asked him when spring training would start, where it would be held, and he had—he told me, and then I asked him what—let's see, would we have practice on a—during A.E.A. holidays, and he stated that he didn't think so, he really didn't know.

Q. Was anyone with you when you asked him about spring training? A. No, sir; I was by myself.

Q. Have you talked to other students at Lanier about spring training or about Jeff Davis generally? A. Nothing other than between ourselves, like something as to the nature, "Are you going to Jeff Davis," and the general reply would be, "I wouldn't know"; that is about the extent of it. Nobody has talked much about it.

Q. Have you discussed this with any Negro students? A. No.

Q. In all your athletic experience at Bellingrath and at Lanier, have you ever played an opposing team from the traditionally Negro school? A. I don't think so.

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Q. At Lanier, have you ever had a sub—a Negro substitute teacher? A. No, sir.

Q. Have you ever had a Negro teacher? A. No, sir

Mr. Allen: That's all the questions I have—I beg your pardon; just a minute.

Q. Did you have an occasion to make up a play book of football plays for coach Livings? A. I had the occasion to write some plays down for coach Livings; yes. It was in study hall one afternoon, and I went down to ask him about whether—it was something concerning the school library at Lanier, and I happened to see several pieces of paper on his desk, and they had football formations on them, and I assumed he was working on them, and I asked him what they were, and he told me they were some of the formations that he thought they would use in the basic offense of the new school, and then he said, "Would you like to look at them," and I said, "Yes, sir; if you don't

mind." And he said, "That will be quite all right," and so I looked at them a few minutes, and I was looking at them, and I jotted down a few plays on each formation that I had known and had come in—you know, contact with. And I suppose I wrote down about six or eight or so for each formation.

Q. You learned these football plays when you were with coach Lee at Bellingrath? A. Most of them; yes, sir; but a few of them I did learn at Lanier.

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Mr. Allen: That's all, your honor.

Mr. Gray: No questions, your honor.

Cross Examination by Mr. Phelps:

Q. Walter, have you decided where you are going to school next year? A. I have not made a definite decision; I would like to go to Jeff Davis, but I haven't made my final decision yet.

Q. You are still considering? A. Yes, sir.

Q. Now, Mr. Allen asked you about did you have a colored teacher at Lanier; you have been interested in athletics at both Lanier and your junior high school? A. Yes, sir.

Q. Do you know a colored—any colored teachers; have you worked with any colored teachers out at Lanier? A. Yes, sir; there is coach Harris, who is P.E. teacher at Lanier; I have become acquaintance with him several times; he is a very nice person, and he works with—he doesn't work with the athletes directly, but on occasion, when some of the coaches are not able to come in and speak with us, then he will come by and keep us in—you know, our order, especially the first two or three days of

school, he was an important person, you know, in that aspect.

Q. All right; you have worked quite a bit with coach Harris? A. Well, not quite a bit, but I have come in direct contact with him.

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Q. All right. Now, have you seen any—any substitute teachers or other colored teachers out there? A. I have seen one substitute teacher or teacher who was colored, and that is the only one I can say that I have seen.

Q. Besides coach Harris? A. Yes, sir.

Q. All right. Walter, you have got a subpoena to come to court today? A. Yes, sir.

Q. When did you get that subpoena? A. Last night about nine thirty or so.

Q. Did Mr. Quaintance, who sits here, give it to you? A. Yes, sir.

Q. Where—where was it served on you? A. At—in my living room.

Q. Did you get any advance notice about that? A. No, sir.

Mr. Phelps: I believe that's all.

The Court: Anything else from this witness?

Mr. Allen: That's all, your honor.

The Court: Witness is excused. You may go, young man. He can go. Call your next one.

Mr. Allen: Mr. Charles Lee.

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CHARLES LEE, witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. State your name, please, sir? A. Charles Lee.

Q. What is your occupation? A. I am presently employed as teacher in physical education at Bellingrath Junior High School.

Q. At Bellingrath, you also coach? A. That is correct.

Q. Basketball? A. Basketball, football, track, all varsity sports.

Q. In your football experience, how many Negro athletes have you had? A. We have had one to come out for football.

Q. When was that? A. This past fall.

Q. Is that the only Negro athlete that you have actually worked with? A. In physical education, we have many colored athletes, colored boys.

Q. You are speaking of physical education classes then? A. As working with these boys as athletes in physical education; outside of school, only one boy has come out.

Q. Have you accepted an assignment to the Jeff Davis

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High School next year as assistant coach? A. That is correct.

Q. You are employed by the Montgomery County school system? A. That is correct.

Q. Has it been part of your duties at Bellingrath to make up—I beg your pardon; has it been part of your duties to make up a basketball schedule for the new Jeff Davis High School? A. Yes.

Q. Have you contacted authorities at other schools to make up this schedule? A. I have contacted other schools.

Q. I will show you a document marked as Government's Exhibit 42, and ask you if you will identify that, please, sir? A. This is a list of coaches, the name of the school, and the town which they are located at, which I have sent out letters to as feelers for basketball schedule.

Q. Are all those traditional white schools? A. As far as I know, all of these schools are integrated schools.

Q. Are they traditional white schools? A. I would assume that, in years past, they have been.

Mr. Allen: I would like to offer this as Government's Exhibit 42.

The Court: 42 will be admitted.

Q. Where did you obtain the names of schools to contact? A. When I first began to make up a list of names,

it was from coaches that I was acquainted with; second of all, from schools that I was familiar with as far as their athletic program is concerned, and schools which were close to Montgomery that I was familiar with, because we, being a new school, are faced with a problem of proximity, and we must try to play schools around close so that we won't have a great deal of traveling expenses.

Q. Did you have a list of schools from which you could select? A. The Alabama High School Association has a directory, and from this directory, the schools that are members of the association, each school is listed, the town in which it is located, the classification of school, the district that it is in, and the coaches on that staff.

Q. Is that the association that Bellingrath is in? A. It is actually an Alabama High School Association; junior

high schools can be a part of the High School Association, although they don't—they do not share in the overall high school set-up.

Q. Well, is it the association that the traditional white schools in Montgomery are in, Lee and Lanier? A. Lee and Lanier are in this association.

Q. Do you have any Negro teachers at Bellingrath? A. No.

Q. Have you seen any Negro substitute teachers there this year? A. I have not seen any, but I am not always in the school.

Q. Have you had occasion to discuss the Jeff Davis High

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School's athletic program with any students? A. Yes.

Q. About how many? A. It would be hard to determine, because of the many questions that have come up by different students at different times that they have asked me, primarily after the article came out in the paper several weeks ago as explaining the eligibility as to whether they would be eligible to attend or not.

Q. Now, this article in the paper explained the eligibility; is that an explanation which was given pertaining to students who are coming from Lee and Lanier schools? A. It—as well as I can remember, it explained that any ninth grade student in Montgomery County was eligible to come and be athletically eligible, and as far as high school was concerned, that they were to live closer to Jefferson Davis than they did to Lee or Lanier.

Q. Have you talked to any Negro students about the athletic program at Jeff Davis? A. I have had no Negro students to ask me of the program. I have not—in other words, they have not asked me just like the white students have, and so this is the only contact that I have had with them.

Q. Has any provision been made, to your knowledge, for furnishing this kind of information to students at Carver and Washington and the traditionally Negro junior.

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high schools? A. The information as it first came out was in the Journal.

Q. All right; then you testified that when that information came out, several white students came and asked you questions about it? A. That is correct; students at our school.

Q. Who would answer those questions for Negro students? A. Anyone that they asked, I suppose.

Q. Has any provision been made to—for you to have any contact with students at traditional schools—traditionally Negro schools? A. Would you repeat the question?

Q. Has any provision been made for you to have any contact with students at traditional Negro schools? A. There have been no provisions made for me as a coach or any other coach to contact any students at any schools.

Q. Is there any reason, that you can think of, why Jefferson Davis shouldn't play Carver and Booker Washington in athletic contests? A. I don't know that I can adequately answer that question; I might answer it by saying this; that when I, as a coach, or any coach sets out to draw up a schedule or set up a schedule for his teams, a great many things are taken into consideration—sportsmanship, closeness, and working relations with that school.

Q. Wouldn't Carver and Booker Washington fit into those categories, closeness? A. Closeness, they would. The level at which we, as a new school, are forced to com-

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pete with, we certainly, as we start out, cannot take on the larger schools. I think this would eliminate a great many

schools in the Montgomery system; we could not compete with the Montgomery public schools, any of the Montgomery public schools, because of the size of their schools and the size of our school. And then we look for it as to what would be the most beneficial for our ball team.

Mr. Allen: That's all the questions I have, your honor.

By Mr. Gray:

Q. Coach, are you familiar with Saint Jude High School? A. I think so; it is located on Fairview Avenue.

Q. Yes, sir; across the street from Carver? A. Yes.

Q. Is it a predominantly Negro or white school? A. As far as I know, it is predominantly Negro.

Q. And it is a smaller school than Carver or Booker Washington, isn't it? A. I don't have any idea about the size.

Q. Did you consider the possibility of getting a game with Saint Jude? A. No; I did not.

Q. You didn't; and I notice on your schedule, you are playing Catholic High School? A. No; this is a possible.

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Q. It is a possibility? A. Right.

Q. You—have you considered the possibility at Saint Jude—to play Saint Jude? A. No; I did not.

Q. I also see you have a possibility on your schedule of Montgomery Academy and Alabama Christian High School? A. That is correct.

Q. Did you consider Alabama State Laboratory High School? A. No; I did not.

Q. Are you familiar with Alabama State Laboratory High School? A. No; I am not.

Q. Have you done anything to familiarize yourself with any of the Negro schools in this area that your team could play? A. As I stated before, when I began to make this list up, my first consideration was for people that I knew, and, in answer to your question, no.

Q. And you don't know any Negroes who are employed in the school system and who are coaches, et cetera, do you? A. I do know some that are employed in the school system.

Q. Do you know the various junior high school coaches in Montgomery, the Montgomery school system? A. No; I do not.

Q. The white ones? A. Yes.

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Q. Do you know the Negro junior high school coaches in the system? A. No.

Q. So really, you have no knowledge at all of the Negroes in the educational field in the Montgomery area? A. Very little.

Q. And you didn't make any effort at all in working out your schedule to find out anything about these persons or these schools? A. No.

Mr. Gray: That's all.

The Court: Mr. Robison, Mr. Phelps?

Cross Examination by Mr. Robison:

Q. Do—does the same rules with respect to scheduling basketball apply as does to football insofar as scheduling teams in the Alabama Athletic Association—High School Athletic Association? A. When, several weeks ago, as I began to draw up or began to form a—this letter, one of the first things that I did was to contact Mr. Scott, who

is head of the Alabama High School Association, to ask if we would be eligible for the Alabama High School Association, and he said that if we were accredited, that we would be eligible, and it had been my understanding that we would be accredited. And so, along these lines then, I began to look at the schools in—that I knew through various contacts that the other Montgomery schools, Lee and Lanier, had had good relationships primarily in years before.

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Mr. Robison: That's all.
The Court: Anything further from this witness?
Mr. Allen: No, your honor.
The Court: You want to excuse this witness?
Mr. Gray: I just have one question.

Redirect Examination by Mr. Gray:

Q. Is it then your testimony that the reason you didn't consider Negroes is because the Negro schools were not on the list of the Alabama High School Athletic Association's directory? A. I did not; I do not know if there are any Negro schools in there, because for this reason; I assume that all of us are integrated schools, first of all, and then there are a great many schools in the directory that I did not contact.

Q. So then your basis, really, was personal knowledge and not the schools that were contained in the directory of the Alabama State Association? A. Personal knowledge is correct.

Mr. Gray: All right.
Mr. Robison: That's all.
The Court: You want to excuse this witness?

Mr. Allen: Yes, your honor.

The Court: Any reason to keep this witness?

Mr. Allen: Beg your pardon?

The Court: Any reason to keep this witness?

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Mr. Allen: No, your honor.

The Court: Call the next one, please.

Mr. Allen: That is all the witnesses we have, your honor.

The Court: The Government rests here. Any further evidence? All right; Plaintiffs.

Mr. Gray: Mr. Scott.

The Court: Let's take a ten minute recess, Mr.—.

(At which time, 2:49 p.m., a recess was had until 2:58 p.m., at which time the hearing continued.)

The Court: All right; your next witness.

Mr. Gray: Mr. Scott.

The Court: First witness for the Plaintiffs, I believe.

NOTE: For testimony of HERMAN L. SCOTT, witness for the Plaintiffs, see excerpt transcript filed February 27, 1968.

The Court: Case is with the Defendants.

Mr. Robison: We would like to call Mr. Walter McKee.

WALTER MCKEE, a Defendant, having been duly sworn, testified as follows:

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Direct Examination by Mr. Robison:

Q. Mr. McKee, you were asked earlier this morning concerning transportation to the new school; how many students are transported to Lanier? A. At the present time, there is four hundred and thirty—approximately four hundred thirty-nine transported to Lanier.

Q. How many to Carver? A. Two hundred ninety-five.

Q. How many to Lee? A. Two hundred—three fifty.

Q. And how many to Booker Washington? A. A hundred and thirty-two.

Q. How is it determined whether a school will be a transported or—school or not; how do you determine whether or not to designate a school as a transported school or not? A. Well, the big thing is, of course, where a school is most likely to have space, back in the days when they had districts, that was the sole factor, and the geographical—geography of the town is another thing that is involved. Now, as I pointed out this morning, the Lower Wetumpka Road, the Wetumpka Highway, and the Atlanta Highway are the areas, and those roads that branch off, that is transported to Booker Washington and Lee High School. Then, coming on around the Vaughn Road to Woodley Road, the McGehee Road, the Narrow Lane Road, and Norman Bridge Road, the Mobile Highway, the Selma Highway, and the Birmingham Highway, those are the

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areas in which students had a choice to go to either Lanier or Carver and will be furnished transportation.

Q. In the designation of a—of an area as transported or in the designation of transported schools, that is, schools to which they are transported, is that based on any ratio factor? A. Not other than to give the opportunity of those living out of the city a chance to ride a school bus to a school of their choice which would be of one race or the other.

Q. So in designating a transported school or a transported area, race is considered a factor so as to permit any child residing in that area, they can be transported either to a predominantly white or a predominantly colored school, depending on their choice— A. That is correct.

Q. —is that your testimony? A. That is correct. Now, I might point out that we have some fifty odd schools, and practically all of them are in town, and we only have transportation to six or eight, something like that. For instance, in the junior high field, we have transportation to about five of them.

Q. Why don't you designate all schools as a transported school? A. That would be a physical impossibility to bring your buses in, say, from the Vaughn Road or in from the Wetumpka Highway and go to three or four different junior highs or to two or three or four senior highs; that would just be a physical impossibility without the children

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having to get up real early in the morning.

Q. So you designate certain areas that buses run over to transport students to a particular school designated as a transported school, and in that area, they have a choice to go to either a predominantly white or a predominantly colored school? A. That is correct.

Q. Now, based on your study and your experience, Mr. McKee, with respect to transportation of this system, and

particularly transportation under the court order, do you have an opinion as to whether or not it would be feasibly possible to transport children to the new school? A. It would certainly not be feasibly possible to transport all of them. It would—the—it would—the space situation there, in my opinion, is going to be very crowded. And, of course, if you put the seven hundred children, roughly, that are now being transported to Carver and to Lanier, your school would be full, practically.

Q. Of transported children? A. That is correct.

Q. Well, would—is it your opinion, based on your study, that there will be sufficient students in the area of the new school so that the present capacity will be filled? A. I—I think there will. I checked on some figures on that during the lunch hour, and I found that the new school is three and seventy-five hundredths miles from Lanier High School

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as the crow flies, from the map, of course; some students will come from there. It is a little over two miles from Lee High School; and just a little bit over three miles from Booker Washington. And, of course, those schools—there would be children in the edges of the districts from all three of those that would be closer to the new high school than would—they would be to the other one.

Q. With respect to the Peter Crump School and the Southlawn, new schools, have you formulated any opinion as to the feasibility of transporting students to those schools? A. We felt that we could not transport students to that school at this time, because we had space in other schools that had been built; we did not have the funds to build rooms except for those that would be more or less in walking distance of those schools.

Q. Are the decisions which you have reached with respect to your proposal on transportation administrative decisions based on the feasibility studies that you have made and not based on a race factor? A. That is correct.

Mr. Robison: I believe that's all.
The Court: Cross.
Mr. Allen: I have no questions, your honor.

Cross Examination by Mr. Gray:

Q. I think, sir, you said that what the Board has done,

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so far as the children in the rural is concerned, is to provide transportation going to a predominantly colored school and a predominantly white school so they can make their choice? A. That is correct.

Q. Now, with respect to—back to my area around Woodley Road where these Negro children have a choice either to Hayneville Road or Goode Street? A. That is correct.

Q. Goode Street now is a predominantly Negro school, isn't it? A. That is correct.

Q. And Hayneville Road school is a predominantly Negro school? A. That is correct.

Q. So now the only transportation in that area that is available for these children now are to be predominantly Negro schools? A. Either the white children or the colored children.

Q. That is the situation, isn't it? A. I said for the white children or the colored children.

Q. So then there is no transportation available to an integrated school or to one of the predominantly other race? A. We are seriously considering that for the next year since we have space now at Harrison School on the

By-Pass, which I referred to, that we may designate that as one of the transported schools in that area, Harrison School and Hayneville Road.

Q. Isn't it a fact, Mr. McKee, all this points up the fact that what the Board really needs to do is to completely

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revamp its transportation system on a nonracial basis? A. I think it is as far as it can possibly be; any child in the county has a choice to go to any school he wants to; he has a choice to go to schools—or transportation, if he is transported, to either a predominantly white or colored school. I don't see how that could be made any fairer, and I don't know of a single child in the county that has been turned down to go to—to any of these transported schools, because I don't believe any of those are frozen.

Q. Of course, if you restrict the number of schools where transportation is available, their choice is automatically restricted, isn't it? A. It is restricted not as far as race is concerned.

Q. Well, I mean the effect of it is a restriction? A. I wouldn't—I wouldn't say as far as race is concerned.

Mr. Gray: I have no further questions.

The Court: Mr. Robison?

Redirect Examination by Mr. Robison:

Q. If you don't restrict it to certain schools or number, it would be impossible to conduct a transportation system? A. It would be impossible, because we could not run a bus —the bus coming from—from the Woodley Road could not possibly go to eight or ten different schools to leave three children here, go over here and leave four, cross over here

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and leave five, and get in all that trouble; children out the Woodley Road would be getting up at three o'clock in the morning.

Q. Mr. McKee, the white children that are living on the Woodley Road, where the choice is between Goode Street and Hayneville Road, as it now stands, if they, the white children, want bus transportation, they would be going to a school and are going to a school which is predominantly of a race other than their own; isn't that a fact? A. That is correct.

Mr. Robison: All right, sir; I have no further questions.

Mr. Allen: I have no questions, your honor.

The Court: All right.

Mr. Gray: Nothing further.

Mr. Robison: We have no further questions.

The Court: Next witness.

Mr. Robison: We would like to call Mr. Tom McGregor, reporter. Mr. McGregor. He hasn't been sworn, if the court please. And would like to also say to the court that he has been sitting here during this.

The Court: I will let him testify.

Mr. Robison: Thank you, sir. You haven't been sworn, have you, Tom?

Witness Jim McGregor: Jim.

Mr. Robison: I mean Jim.

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Witness Jim McGregor: No, sir.

The Clerk: Do you solemnly swear that the testimony you give in this cause to be the truth, the

whole truth, and nothing but the truth, so help you, God?

Witness Jim McGregor: I do.

JIM MCGREGOR, witness for the Defendants, having been duly sworn, testified as follows:

Direct Examination by Mr. Robison:

Q. State your name, please, sir? A. Jim McGregor.

Q. And by whom are you employed? A. Montgomery Advertiser.

Q. How long have you been employed? A. Three years.

Q. Did you make the first contact with Mr. McKee or the Board of Education with regard to inquiring about the new high school? A. I think I did one of the first stories that was done about the new high school, because I had—if I can explain, I would—had been covering a court case that had been in State Circuit Court concerning money that was going to be available for this new school, and I covered a School Board meeting, I think, right after the whole thing had been straightened out in State Court, and the School Board knew they were going to get the

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money for the new school, and the School Board took some action saying that the new school was definitely going to be built, and I did a story at that time.

Q. That was the State Court action with reference to the wage scale— A. Yes, sir.

Q. —requirement to be put in the contract? A. (Nodded to indicate affirmative reply)

Q. And when that cleared and the money became available, you attended a meeting; at that meeting, did you

have any conversation with Mr. McKee regarding this school and what type of school it would be? A. Yes, sir; I think I talked to him. I—I talked to him immediately after the meeting; I think I went to his office in the Board of Education.

Q. What statement did he make to you, if any, with respect to the race factor of this school or what it was designed to be? Insofar as race is concerned? A. The best I can remember, we—we talked about how many classrooms—

Mr. Gray: Your honor, we are going to object to this as self-serving.

The Court: I will permit it.

Mr. Gray: All right.

Q. What statement did he make? A. At one point in the conversation, he made it clear to me, and the best I

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remember, he specifically requested that it be made clear that this school, like all the other schools, were under the freedom of choice plan under court order.

Mr. Robison: I believe that's all.

The Court: Cross.

Mr. Allen: Can I see those newspaper—the newspaper clippings?

Cross Examination by Mr. Allen:

Q. I would like to show you a document which has been marked as Defendants' Exhibit 4, and ask you did you write that story? A. No, sir.

Q. You didn't? A. No, sir.

Q. Did you cover any of the meetings that were held by the committee organized to raise funds for the new high school? A. No, sir.

Q. You didn't. Have you talked to Mr. Jack Rutland at all about the new school? A. No, sir.

Q. Have you talked to any of the officials who will be assigned to the new school next year? A. No, sir. Except —well, just Board of Education; I have on occasion, four or five occasions, the last two or three years, I have covered Board of Education meetings and just reported

what went on in the meeting, but—

Q. How many contacts did you have with the Board of Education, please, sir? A. I would say I covered three or four meetings last fall. They usually meet about once a month, and I have covered maybe three meetings last fall. Another reporter and I at the paper sort of split it—one of us cover one time.

Q. Are these all pertaining to the new Jeff Davis High School? A. No, sir.

Q. How many contacts pertaining to that school? A. This is the only—the meeting I testified earlier about is the only one I can think it was specifically much talk was about the new Jeff Davis High School.

Q. And how many articles did you write about the new Jeff Davis High School? A. I think the one I referred to, and I don't remember the exact day I wrote it, but I think that was the only one I wrote that really pertained to the Jeff Davis High School.

Q. When did that appear? A. It was either late summer or early fall; I don't know the date; the best of my remembrance and recollection, it was.

Q. Did you put anything in that article about who would

be going to that school, what students? A. (Shook head to indicate negative reply)

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Q. You didn't? A. My only reference—and I am—and I am sure I quoted Mr. McKee—is saying that it would be freedom of choice. I made no reference to area or what area of the city they would come from or anything.

The Court: Mr. Gray?

Mr. Gray: No questions.

The Court: Mr. Robison?

Mr. Robison: We have no further questions.

The Court: All right.

Mr. Robison: Thank you, sir.

The Court: Step down.

Mr. Robison: Defendants rest, if the court please.

The Court: Case back with the Government.

Mr. Allen: No rebuttal, your honor.

The Court: All right.

Mr. Gray: No rebuttal.

The Court: How long you want to file your brief?

Mr. Allen: If we could have ten days, your honor.

The Court: All right. That will make it by the —by the 19th, February 19. Will that be enough time for you all, Mr. Robison?

Mr. Phelps: Yes, sir.

Mr. Robison: All right, sir.

The Court: I need to get an order out sufficiently prior to this next—to this freedom of choice period

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here. That should be the latest.

Mr. Allen: We would like to submit a proposed order, if that—the court would—

The Court: Yes; that will be all right. You may, also. We will recess until further order.

Court Reporter's Certificate (omitted in printing)

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(NOTE: This transcript is an excerpt transcript containing the testimony of HERMAN L. SCOTT as given in hearing in above case on February 9, 1968, and of his testimony only.)

HERMAN L. SCOTT, witness for the Plaintiffs, having been duly sworn, testified as follows:

Direct Examination by Mr. Gray:

Q. State your name, please? A. Herman L. Scott.

Q. Your occupation, Mr. Scott? A. Executive Secretary of the Alabama High School Athletic Association.

Q. How long have you held that position? A. Almost two years.

Q. Tell us, sir, what is the Alabama High School Athletic Association? A. The Alabama High School Athletic Association is an organization made up by its member schools for the purpose of regulating athletics in those schools.

Q. What connection, if any, does that association have with the State of Alabama? A. None.

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Q. Where your offices are located? A. In the State Office Building.

Q. And does the Association pay rent for those facilities? A. The State Board of Education has granted the Alabama High School Athletic Association office space since it was started and employed a fulltime secretary.

Q. Now, your secretary—

The Court: You mean the State employs the secretary?

Witness: No—excuse me; the State Department of Education.

Q. The State Department of Education supplies your association with office space? A. Yes.

Q. And supplies your association with a fulltime paid secretary? A. No.

Q. Correct me then? A. Our association pays all of its employees from its own revenue income.

Q. I thought I understood you to say something about a secretary? A. I am the Executive Secretary.

Q. And who pays you? A. The Association.

Q. Now, does the State of Alabama pay anyone else connected with your association? A. It pays no one.

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Q. Did you make a statement, sir, initially about a secretary or something that— A. If I did—

Q. —it supplied? A. If I did, it was in error.

Q. Okay. Now, what about—you said the Association consists of its member schools— A. Right.

Q. —is that correct? A. Right.

Q. What are the qualifications for membership in your association? A. That a school be accredited by the State Department of Education; that its principal make application to its Central Board of Control; and that this membership be accepted by the Central Board of Control.

Q. Now, approximately how many members have you throughout the State? Member schools? A. Three hundred and sixty-seven.

Q. And how many of those are Negro? A. None.

Q. Have there ever been any Negro schools a member of the Association? A. Not to my knowledge.

Q. How long have you been connected with the Association? A. As Executive Secretary?

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Q. Yes, sir? A. Almost two years.

Q. And in any other capacity? A. That is the only time under fulltime—in a fulltime capacity. I coached in one of the high schools in the State for fourteen years, but that is not in an official capacity with the Association.

Q. All right; now, at any time, did the Alabama High School Athletic Association have racial restrictions against Negro members? A. Not to my knowledge.

Q. Have you ever had any Negro members? A. Have we ever had any Negro members?

Q. Any Negro school members? A. Not to my knowledge.

Q. Has the Association—are Negro schools eligible for membership? A. Yes.

Q. Has the Association made known to these Negro schools that they are—that they will be considered for membership? A. It hasn't been asked.

Q. And have you volunteered this information? A. No.

Q. Has there been any discussion between your association and—strike that. Do you know whether or not there is another athletic association in the State? A. Yes.

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Q. What is the name of it? A. Alabama Interscholastic Athletic Association.

Q. And what association—is that the association for Negro schools? A. That is my understanding.

Q. Is there any working relationship existing between the Alabama High School Athletic Association and the

Alabama Interscholastic Athletic Association? A. They are both independent organizations. Up until this year, the Alabama High School Athletic Association conducted some of the officials' clinics for the Alabama Interscholastic Athletic Association.

Q. Has there been any consideration of merger between the two organizations? A. No.

Q. Do you foresee any difficulty in merging these two athletic associations? A. I see no necessity of it.

Q. Do you see any necessity for the existence of the two organizations? A. Well, each school has its own opportunity to join the association that it chooses; and in years past, those schools have chosen to join the respective associations as far as I know.

Q. Well, now, actually, Mr. Scott, in years past, isn't it a fact that the Alabama High School Athletic Association wouldn't accept Negro schools before the court order? Isn't that a fact; if one had applied, they wouldn't be accepted in membership? A. I don't know.

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Q. As—in addition to your membership, so far as schools are concerned, do you have any individual members; that is, are school principals members, and are coaches members, also? A. It is an organization made up of institutional membership.

Q. And if an institution becomes a member, does that mean the coach and the principal of that school is also a member? A. The principal is held responsible for the action of his school, but the institution maintains the membership.

Q. Well, now— A. It is not—it is not an organization of individual memberships.

Q. But, now, how is the— A. We have an auxiliary of the coaches' association, which is an auxiliary of the Alabama High School Athletic Association; it is called the Alabama High School Coaches' Association.

Q. Now, that is an auxiliary or subsidiary of the Alabama High School Athletic Association? A. Right; right.

Q. Now, tell me, do you know whether or not the State of Alabama State Department of Education provides the Alabama Interscholastic Athletic Association with office space as they do your association? A. It is my understanding that their offices are at Alabama State.

Q. Alabama State— A. College.

Q. —College? Now, how is the voting done; is each school given a vote, or just what happens? A. Each school

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has one vote.

Q. One vote; and that vote is exercised by the coach or by the principal? A. By the principal as head of the school; he may designate this power to the coach or some other faculty member.

Q. Now, is there any geographical regions of your associations—of your association? A. Geographical regions?

Q. Regions or zones or areas? A. It takes in those schools in the State of Alabama.

Q. What I am asking is whether or not the State is in turn divided into six zones? A. Various districts?

Q. All right? A. Athletic districts; eight in the State.

Q. Eight athletic districts; and what district is the Montgomery School System in? A. Third.

Q. Does your association sets up rules and regulations with respect to athletic contests in the various schools? A. That is true.

Q. What are these rules so far as eligibility is concerned? A. Our eligibility rules deal with the age of a student, his academic achievement, the number of semesters that he has been in school, and the transfer group.

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Q. What control, if any, does your association have over its members so far as playing teams who are not members of your association? A. We state in our rules that a school may not play a school that is not a member of the Association if that school is eligible for membership in the Association.

Q. And you say the only criteria for membership in the Association is that the school be accredited by the State of Alabama; is that right? A. And that its principal files application for membership.

Q. All right. So now, if we take an example of Carver High School, here in the City, that is accredited, if Lanier High School as one of your members were to play Carver High School, what action, if any, could your association take against Lanier? A. If one of our schools plays any school that is not a member of the Association, but is qualified to be a member of the Association and through their own choosing is not one, then that school may be disciplined for this action; it may be fined, it may be put on probation, it could be suspended from the Association.

Q. Now, has your association or has any of the school principals or school superintendents—

The Court: The effect of this rule, then, is that no white—that no school that is a member—that any school that is a member of your association that plays a Negro school is subject to be suspended or fined?

Witness: It has nothing to do with race, Judge, at all.

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The Court: No; but you don't have any Negro schools that belong—

Witness: No.

The Court: —so the effect of it, then, if any member school of your association plays a Negro school in the State, they are subject to be disciplined or fined?

Witness: That presently is not a member of our association if that school is eligible for membership.

The Court: You say they are eligible?

Witness: If they are eligible; yes, sir.

The Court: You say the Negro schools are eligible?

Witness: If they are accredited, they are eligible; yes, sir.

The Court: Yes; I understand.

Q. Now, correct me if I am wrong; I think you said that they must be accredited, and they must be voted on by your Central— A. Central Board accepts their application.

Q. All right; now, who is the Central Board? A. The Central Board is made up of one representative from the eight athletic districts making an eight-man Board.

Q. And actually, each one of these eight persons ultimately represents a school or is from a school? A. He represents his district, but he is from a school; yes.

Q. That's right. A. He is a school person; he is either a principal, a teacher, or a coach in the school.

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Q. Now, in deciding upon or in acting upon membership, is it more or less customary, if the school is accredited, is it more or less routine for the governing body to act favorably on an application? A. To my knowledge, we have never denied one.

Q. Never denied one? A. (Nodded to indicate affirmative reply)

Q. Now, has there been any discussion in any of your meetings with respect to accepting Negroes, Negro schools or predominantly Negro schools into membership? A. Has there been any discussion of it?

Q. Yes, sir? A. Well, I am sure that we have all discussed Negro schools since the court order came into effect, and this has been discussed from time to time.

Q. Has any action been taken? A. No action.

Q. As Executive Secretary—I think that is your title— A. Right.

Q. —have you made any recommendations to your governing body as to what action should be taken? A. We have had no cause to.

Q. You do not consider the fact that you still have two dual athletic systems in the State, there is no cause for it? A. I consider the fact that we have not had a membership

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submitted and no reason to take action.

Q. I show you, sir—

The Clerk: Plaintiffs' Exhibit number 1 for identification.

Q. I show you Plaintiffs' Exhibit 1 for identification; will you identify this for us, please? A. This is a Hand-

book of the Alabama High School Athletic Association which lists in it the constitution and bylaws of the Association.

Q. And that is the Association we have been talking about? A. Yes, sir.

Mr. Gray: We offer that in evidence as Plaintiffs' Exhibit 1.

Q. Now—

The Court: It will be admitted.

Q. —will you tell me, sir; is that document, Plaintiffs' Exhibit 1, published by the Alabama State Department of Education? A. It is listed as a publication of the Alabama State Department of Education; I cannot speak prior to my becoming Executive Secretary, but since I have been Executive Secretary, the Alabama Athletic Association has paid for that publication. It also lists in the front of it the organization for health, physical education, and recreation in the State.

The Court: The State Board pay for it, or who pays for it?

Witness: We pay, or the Alabama High School

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Athletic Association, since I have been there, Judge.

Q. But it is considered an official publication of the State Board of Education? A. That's right.

Mr. Gray: I believe that's all.

The Court: For the Government?

By Mr. Allen:

Q. Just one question; does anyone from your association actually participate in the scheduling of athletic contests between the different schools? A. That is left up entirely to the schools.

Q. That is done by the authorities at the school, itself? A. Right.

Mr. Allen: That's all.
The Court: All right.

Cross Examination by Mr. Robison:

Q. Mr. Scott, what is the purpose of your organization? A. The purpose of the Alabama High School Athletic Association is to regulate and to control athletics in its member schools.

Q. Is it comparable to the Southeastern Conference and the Atlantic Coast Conferences and other conferences that are controlled by the associations? A. This is the type organization it is. These conferences, of course, are known throughout the Nation in colleges; in high schools; various

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national organizations, such as the N.C. double A., the N.A.I.A., are in the various regions of the country, such as Southeastern Conference, such as the Atlantic Coast Conference, as the Big Ten, the Pacific Coast Conferences, and things of that nature.

Q. What—how long—what was the history for the formation of this organization? A. I guess really we might can go back many, many years ago when in athletics there was an awful lot of trouble, and I guess it goes back to the game of football, itself, which in the days of Teddy

Roosevelt and during his administration there was a congressional investigation committee formed to investigate football as it was being played in the colleges of the Nation. The reason for this was because of the old flying wedge that was being used by football teams at that time and the fact that so many people were being injured or killed with the old flying wedge, so they set up a congressional investigation committee, and as the story goes, football was about to be banned from these institutions by the Congress of the United States, and they called Knute Rockne, who was then coach at Notre Dame, to testify before the committee or to tell something about football, and in essence, what Coach Rockne told them was that there had to be some type of activity in the schools of the Nation that would give every red-blooded American boy the opportunity to go out and to compete in some type of combative sport where there was contact, that this was an innate

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desire in people to—and particularly young people—to strike back, to want to strike back, and if it was not given some avenue of escape through some type of organization, it would manifest itself in the back alleys of the cities and towns of the Nation with knives and blackjacks and brass knucks and this type—and this type thing. So the committee made the recommendation that a body be formed to draw up rules whereby that this game could be played. And in essence, this was the beginning of the N.C. double A., the National Collegiate Athletic Association, which controls the athletics in the colleges and universities of the Nation, of the land, today. And all of these other organizations had their beginnings in their regions and in their states from the same—from this same cause. In essence, the reason that the Alabama High School Athletic Asso-

ciation was formed in the State of Alabama was so that the people that were representing the schools would be true students. Years ago, they brought them out of the coal mines, they brought them from the saw mill, and they brought them off the farm.

The Court: I believe that is enough of that; let's get along.

Mr. Robison: All right, sir.

Q. What activities do you conduct or is under the sponsorship of your association with respect to coaches and so forth for the conference? A. What activities?

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Q. Yes, sir? A. We conduct the All Star football games which are played at the University of Alabama each fall. We also conduct, in connection with the University of Alabama, a coaches' clinic held at the University in the fall.

Q. Do you also conduct schools with respect to referees and officials for the games? A. We carry on an officials' training program.

Q. Is race a factor in membership in your association? A. No, sir.

Q. What—state to me again, what is the only requirement for membership in your association? A. That a school be accredited by the State Department of Education; that its principal submit an application to the Central Board of Control; and that the Board give this application due consideration.

Q. Have you ever denied any application that has been filed with your association where the student body was predominantly of the Negro race? A. To my knowledge; no.

Q. The requirement of your association, as I understand it, is that if a member school plays a school which is not a member or an application has not been filed for membership, then disciplinary action can be taken against that school? A. Only—only if this school is eligible for membership; if it is an unaccredited high school in the State, then, of course, the schools may play them at their own risk.

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Q. You were asked about the Alabama Interscholastic Athletic Association; are you familiar wth that association? A. Only that it is a comparable organization to the Alabama High School Athletic Association.

Q. Does it have the same rules and regulations, to your knowledge, with respect to member teams that the Alabama Athletic Association has? A. Basically, their rules and regulations were copied from ours.

Q. Their rules and regulations were copied from yours, basically? A. Yes, sir.

Q. So if a member of that association, that is, the Alabama Interscholastic Athletic Association, plays a school that is not a member of that association or is not eligible for membership with an application pending, then they can take disciplinary action against their member school; is that true? A. To my knowledge; that is true.

Q. You were asked if this was an official publication of the State Board of Education; I ask you, is that an official publication or an authorized publication by the State Board, and if so, what is in it—what is the difference? A. This is authorized by the State Board of Education, a publication authorized by the State Board, meaning that it is published and sent out to all of the schools in the State of Alabama which are members of the Alabama High School Athletic Association or any schools which have the organi-

zation of health, physical education, and recreation in it.

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Q. Does the State Board of Education have anything to do with the approval of these rules and regulations? A. Not to my knowledge.

The Court: Why does it take the authority of the State Board of Education to send this out; you say they authorize you to do it?

Witness: The organization of health, physical education, and recreation, Judge, is worked through the State Department of Education in the Division of Secondary Schools headed up by Dr. Blair. Mr. Charlie Stapp is in charge of that program, and athletics have always been a natural outgrowth of the physical education program in the schools.

The Court: Considered—

Witness: Physical education is a required course in the school; athletics, of course, is an extracurricular activity carrying no credit or no requirement to it, and the rules and regulations and guidelines of health, physical education is in that book along with the rules and regulations of athletics, in that athletics are a natural outgrowth of the physical education program.

The Court: All right; let's get along.

Q. Are the member schools in your association desegregated? A. Yes, sir.

Q. Do you recall the game played here in Montgomery at which time Tuscaloosa had predominantly a Negro team

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on the field playing either Lee or Lanier? A. It had six at one time out there, the best that I remember.

Mr. Robison: I believe that's all.

The Court: Mr. Allen?

Redirect Examination by Mr. Allen:

Q. You mentioned that you conduct coaches' clinics; have there ever been any Negroes at those coaches' clinics? A. Yes, sir.

Q. How many and when? A. I couldn't say exactly how many; I have been going to those clinics for seventeen—eighteen years, and to my knowledge, they have always been in attendance; some have always been there.

Mr. Allen: All right; that's all.

Mr. Gray: We have no further questions.

Mr. Robison: Like to ask you one further question.

Recross Examination by Mr. Robison:

Q. What is the purpose of the rule prohibiting a member school in your association from playing a non-member school of your association; is it race? A. No, sir; the purpose of that rule is that all schools will play by the same rules; in other words, that the age of the students will be the same, that the academic requirements will be the same, that the number of semesters spent in school will be the same, and that the transfer rule would apply

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the same way, that they all play equally as far as those students who represent them on the field are concerned according to the eligibility requirements.

The Court: Does the Interscholastic Association, the Negro association, have the same rule?

Witness: To my knowledge, they do, Judge.

The Court: All right.

Witness: Or similar rules.

The Court: All right. Anything else?

Mr. Allen: Nothing further.

The Court: Let me ask you a question or two. Have you conferred with Rutland and Livings on the eligibility of the players over there the first year for the Jeff Davis School?

Witness: Only these students, Judge, which might transfer.

The Court: Have you conferred with them on that problem?

Witness: With the County Board of Education and these principals of the Montgomery city schools.

The Court: Have you conferred with the new principal of the Jeff Davis School and the new coach at the Jeff Davis School on the eligibility of their players this first year?

Witness: For those that transfer from Lee or Lanier; yes, sir.

The Court: And what did you all determine on that?

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Witness: We set up a rule whereby that those students who are presently enrolled in Lee or Lanier could transfer to the new school provided that they live closer to the new school than they do to the school they are now attending. Ordinarily, these students would be ineligible to transfer from one school to another, that is, transfer their athletic eligibility.

The Court: And play the first year?

Witness: And play the first year.

The Court: And what did you determine as far as Negro athletes were concerned?

Witness: The court order takes precedence there in that if a student is transferring for the first time on a desegregated basis, that he is ruled eligible to participate in that school, because the Board of Education transferred him over there.

The Court: He doesn't have any waiting period; the Negro transferring doesn't have any waiting period?

Witness: This has been the ruling we have gone along with in our association.

The Court: That's right; that is set out, of course, in the court order.

Witness: That's right; that is why these other students were not considered, and only those schools —those students from Lee and Lanier.

The Court: Yes. Do you know who was instrumental in the publicity that leaves the impression

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that only athletes transferring that live close to the Jeff Davis School will be eligible to play? Here is one by Walter Massey that says that; I just wondered if you knew who was responsible for that interpretation of the rule?

Witness: No, sir; this is the first time I have seen this article, Judge.

The Court: Uh, huh.

Witness: Of course, it is general knowledge, and—

The Court: Would you say it was general knowledge that Negro athletes had a right to transfer

from publicity like that? If they didn't live near that school?

Witness: I don't know how this might be interpreted.

The Court: How do you interpret it along that line?

Witness: Well, I thought it was common knowledge that—

The Court: How do you interpret that along that line?

(Witness examined Exhibit.)

The Court: Pretty difficult to interpret, isn't it?

Witness: Well, Judge—

The Court: So as—

Witness: —in my—in my opinion, all school people know about the court order.

The Court: What we are interested in is students that may want to transfer and not school people that have studied this court order and talked with the Judges and the lawyers about it.

Witness: Yes, sir; of course, we don't have any-

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thing to do with what they publish and how it is published.

The Court: I don't guess I am concerned in this case with the zones that you all may have agreed on as far as your transferrers from Lee and Lanier, from your white schools; I wouldn't think the court would be concerned with that; that just has to do with—I understand you have established some zones?

Witness: Yes, sir; just for eligibility purposes.

The Court: That just has to do with your white athletes—

Witness: That's right.

The Court: —that are transferring?

Witness: That's right; that is why we said Lee and Lanier.

The Court: All right. That's all I want to ask him.

Mr. Gray: I have no further questions. Plaintiffs rest.

The Court: All right. You want to excuse this witness?

Mr. Robison: Yes, sir.

The Court: You are excused.

Witness: Thank you.

(End of testimony of Herman L. Scott)

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Court Reporter's Certificate (omitted in printing)

Order Granting Expedited Hearing

(Filed March 12, 1968)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*,

Appellants,

—versus—

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Before:

BROWN, *Chief Judge,* and
AINSWORTH and GODBOLD, *Circuit Judges.*

BY THE COURT:

IT IS ORDERED that the joint motion of the parties filed in the captioned cause for an expedited hearing and submission of the appeal on the original record and on typewritten briefs be hereby Granted, provided two (2) extra,

xeroxed copies of the original record are prepared after the record has been appropriately indexed, numbered and certified by the Clerk of the District Court, and are furnished by appellants for the use and convenience of the Court.

Four (4) legible xeroxed copies of the typewritten briefs prepared in the form required by this Court's Rule 26 may be filed and exchanged by all parties by not later than April 23, 1968, with appellants' xeroxed brief to be filed and served on all opposing parties by April 5, and with appellees' brief to be filed by not later than April 25. The Clerk is authorized to calendar this case for hearing at the earliest practicable date consistent with other requirements of the docket.

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District Court Clerk's Certificate of Completeness of Record, Dated March 20, 1968 (omitted in printing)

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Notice of Cross Appeal by Amicus Curiae

(Filed April 11, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action No. 2072-N

ARLAM CARR, *et al.*,

Plaintiffs,

UNITED STATES OF AMERICA,

Amicus Curiae,

—v.—

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*,

Defendants.

Notice is hereby given that the United States, amicus curiae herein, hereby cross-appeals to the United States Court of Appeals for the Fifth Circuit from the Orders of the United States District Court for the Middle District of Alabama, Northern Division, entered February 24, 1968 and March 2, 1968, which denied the requested relief that the faculties of all new schools in Montgomery County be fully desegregated.

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To allow sufficient time for the parties to reply prior to the argument now set for May 6, 1968, in Atlanta, Georgia, the United States will file one principal brief as appellee and cross-appellant on April 15, 1968.

FRANK D. ALLEN, JR.
Attorney
U. S. Department of Justice

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Certificate of Service (omitted in printing)

Argument and Submission

Extract from the Minutes of May 6, 1968

No. 25865

UNITED STATES OF AMERICA,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*

On this day this cause was called, and after argument by Nathan Lewin, Attorney, Department of Justice, for appellant, and V. H. Robison, Esq., and Joseph Phelps, Esq., for appellees, was submitted to the Court.

Opinion and Judgment
Dated August 1, 1968

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL.,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama

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(August 1, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

GEWIN, Circuit Judge: The United States and appellees filed motions in the United States District Court for the Middle District of Alabama on August 17, 1967, and February 7, 1968, requesting the district court to require appellants to take further steps to eliminate the dual school system in Montgomery County, Alabama. Hearings were held on September 5, 1967 and February 9, 1968. The district court entered its order on February 24, 1968, amended March 2, 1968, granting specific relief in the areas of faculty desegregation, student teacher and substitute teacher desegregation, school construction, student transportation, and student choices regarding newly constructed schools. This appeal followed. We affirm the order of the district court as hereinafter modified.

We see no need to recite the history of the school board's efforts to comply with the constitutional mandate to desegregate its public schools. However, we note that progress has been made and that the school board has been complimented on its good faith efforts. We do not wish unduly to emphasize or de-emphasize good faith on the part of this particular board of education, but we do take note of the fact that this is the very first time it has been before this court. This case does not bear the "many service stripes" mentioned in United States v. Board of Educ. of Bessemer, 5 Cir. 1968, ____ F.2d ____ [Nos. 25809, 25810, 25811, June 3, 1968]. *See also* Davis v. Board of School Comm'rs of Mobile, 393 F.2d 690 (5 Cir. 1968).[1] In our view, good

[1] In *Davis*, the court mentioned the fact that the case involving Mobile schools had been before the Fifth Circuit five times since 1963. 393 F.2d at 691 n.1.

faith conduct on the part of any litigant in any court, especially a court of equity and, more particularly, in the sensitive area of desegregation, is a vital element for appropriate consideration. Our feeling with respect to good faith is buttressed by the recent decision of the Supreme Court in Green v. School Bd. of New Kent, ____ U.S. ____, 20 L.Ed.2d 716 (1968).[2] Some five times, during the period from 1964 to 1967, the district court publicly complimented the Montgomery County School Board on its efforts toward achieving desegregation.[3]

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[2]There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in *light of the circumstances present* and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in *good faith* and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief. Of course, where other, more promising courses of action are open to the board, they may indicate a lack of *good faith;* and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. 20 L.Ed.2d at 724 (emphasis added).

[3]At the conclusion of a hearing on May 25, 1967, the court made the following statement from the bench:

> I would like to say this to you here in the presence of the plaintiffs and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as profes-

It is not necessary to discuss all of the provisions of the district court's order. Appellants challenge that portion of the order which directs them (1) to assign and transfer faculty members, student teachers, and substitute teachers throughout all schools in the system and from one school to another according to a fixed mathematical ratio based on race, and (2) to give affirmative preference to Negro students who choose to attend a newly constructed high school. That part of the court's order challenged on appeal is set forth below:

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sional educators and not as politicians. This present attitude is demonstrated here at this time; this past conduct on the part of these officials has, without any doubt, inured to the benefit of the students regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have accomplished this largely through — or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar operations is a considerable feat, for which this community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate.

Again on September 5, 1967, at the conclusion of a hearing which apparently formed a partial basis for the order now under consideration, the court stated from the bench:

You are dealing here with a school system that you haven't had to take to your appellate courts a single time since you started. It is the only major school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they had been ahead of most of your other systems in every field.

I. FACULTY AND STAFF

A. *Statement of Objective.*

In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

B. *Schedule for Faculty Desegregation.*

1. *1968-69.* At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for

the time being, other specific faculty and staff desegregation requirements for future years.

C. *Means of Accomplishment.*

If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filling vacancies, then it will do so by the assignment and transfer of teachers from one school to another.

D. *Substitute Teachers.*

Commencing in September, 1968, with the 1968-69 school year, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

Commencing with the 1968-69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only at predominantly white schools or only at predominantly Negro schools.

E. *Student Teachers.*

Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substan-

tially the same as the ratio of white and Negro student teachers throughout the system.

F. *Night Schools.*

Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program.

IV. JEFFERSON DAVIS HIGH SCHOOL, PETER CRUMP SCHOOL, AND SOUTH LAWN SCHOOL

D. *Honoring Choices.*

The school board will honor the choices of each Negro student who chooses to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the Court on the school board's motion.

The district court denied appellees' request that the ratio of white to Negro faculty members in new schools be approximately three to two in their first year of operation. Appellees have cross-appealed on this issue.

I

ASSIGNMENT OF TEACHERS

It is clear from the record and briefs that appellants fully recognize that they have the affirmative duty to

desegregate the faculties throughout their entire school system. They have been striving to carry out this duty by seeking and encouraging voluntary transfers of teachers and by requesting new teachers to accept positions in schools where their race is in the minority. Appellants further recognize that they have the legal right to compel faculty assignment if voluntary placement is not effective.[4] However, appellants object to the district court's order requiring assignment of teachers on the ground that such is not in keeping with sound and quality school administration. We quote from appellants' brief:

> In *Beckett v. School Board of City of Norfolk, Virginia*, 269 F. Supp. 118, at page 139 (E.D. Va. May, 1967) the Court stated, in considering faculty desegregation:
>
> > However, in line with the most recent Wheeler case [Wheeler v. Durham City Board of Education, 363 F.2d 738], the School Board has not adopted

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[4]Although appellants consistently argue for voluntary assignment of teachers and staff and contend that "sound and quality school administration" favors voluntary assignment, the following statement from appellants' brief shows clearly that they recognize their obligation:

> These appellants fully recognize that they have the affirmative duty to desegregate the faculty throughout this school system to the end that "the pattern of teacher assignment to any particular school shall not be identified as tailored for a heavy concentration of either Negro or white pupils in the schools." (R.p.370 and *U.S. v. Jefferson County Board of Education*, 372 F.2d 836; aff'd en banc, 380 F.2d 385) The appellant recognizes further that they have the legal right to compel faculty assignment if voluntary placement is not effective.

> the tactic of compelling a teacher to transfer. *Moreover, such a practice would not be in accord with sound educational principles.* (Emphasis supplied)

The question of whether a school board is obligated to assign teachers to schools where their race is in the minority when efforts to persuade teachers voluntarily to accept such positions fail, has recently been before this court. United States v. Board of Educ. of Bessemer, *supra*. That opinion answers the above question with an emphatic *yes*. We quote:

> The School Boards do not meet their duty by soliciting volunteers. For the fact remains that the "responsibility for faculty desegregation, just as the responsibility of student desegregation, lies ultimately with the board, not the teachers." Davis v. Board of School Commissioners of Mobile County, 5 Cir. 1968, 393 F.2d 690. So there will be no mistake about it we spell out that *Jefferson* stands for the proposition that there is an affirmative duty on the part of the School Boards to do everything — the word is everything — within their power to meet the decree-imposed complete desegregation of faculties. It is not, it cannot be, left to the voluntariness of teacher applicants or transfers.

We therefore find no error in the court's order requiring the assignment of teachers since efforts to achieve faculty desegregation by voluntary means have failed.

II

FIXED MATHEMATICAL RATIO

Appellants strenuously object to the imposition of the mathematical ratios contained in the district court's order. They contend that such ratios are arbitrary and unwarranted in view of their extensive plans to desegregate their faculties, their showing of good faith, and the overall achievement of progress in the area. In addition, appellants submit that a fixed ratio does not take into consideration the availability of teaching personnel or the complexity of school administration, and that it ignores the goal of quality education and other similar factors which are inevitably involved in the operation of a school system.

After extensive hearings, the court below found that desegregation of faculties in the Montgomery County school system was lagging and that appellants had failed to comply with earlier orders of the court requiring full faculty desegregation. In order to remedy the lack of faculty integration, the court imposed specific targets for the school year 1968-69 and, more specifically, delineated what would be required for satisfactory compliance. Thus, under the district court's order for the school year 1968-69, most schools in Montgomery County must have roughly one-sixth of the faculty and staff of a race different from that of the other five-sixths. The school board will have achieved full compliance when the ratio of white to Negro teachers is three to two in each school. At the outset we note that

the testimony of school officials indicates a need for specific directives in the instant case.[5]

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[5]The following is an excerpt of the testimony of Associate Superintendent W. S. Garrett:

Q. As part of your duties, have you been given the responsibility, primarily, of carrying out faculty desegregation?

A. Well, the superintendent has delegated the recommending of the best faculty members that I can come by, and desegregation is a large — our faculty is a large part of my responsibilities; not the only one, but that has been discussed and — with the Board and with the superintendent, and we have a plan to accomplish this, have been working on it all year.

Q. Well, under your plan, when do you estimate that faculty desegregation will be finally accomplished in terms of the objective of the court order removing —.

A. Well, now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of. It says that you will have reasonable desegregation of faculty and that you will strive toward having each faculty not recognizable as being staffed for a particular race. That is what I get out of it.

Q. Well, let —

A. So I — I can't — this court order is in fairly general terms; I can't answer that question.

Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished?

A. Well, that would depend on what the Board's definition of that is, the court's definition of that.

Q. Do you have a definition of that?

A. Not at this point; we have discussed that many times, and I do not have a definition of — of what that would mean.

Q. No one has told you, given you a definition in terms of mechanics, in terms of numbers, none of your superiors?

A. No, as far as I know, no other school personnel man

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In United States v. Jefferson County Board of Educ., 372 F.2d 836 (5 Cir. 1966), *aff'd en banc*, 380 F.2d 385 (5 Cir. 1967), *cert. denied*, 389 U.S. 840 (1967), we dealt with faculty desegregation. Following *Jefferson* the question of faculty desegregation has recently been before this court on at least three separate occasions. Stell v. Board of Educ. of Savannah, 387 F.2d 486 (5 Cir. 1967); Davis v. Board of School Comm'rs of Mobile, *supra;* and United States v. Board of Educ. of Bessemer, *supra.* We have continued to emphasize the responsibility of school boards in achieving effective faculty desegregation. We have emphasized the desirability of their doing so because of their expertise in the field of education. Nevertheless, we have made it clear that it is the duty of district courts to require specific target dates and accomplishments in order to ensure full compliance with all deliberate speed. Moreover, it is clear from recent decisions of the Supreme Court that the type of plan under which school boards should operate is a plan which works. Green v. County Bd. of New Kent, *supra;* Monroe v. Board of Comm'rs of Jackson, ____ U.S. ____, 20 L.Ed. 2d 733 (1968); Raney v. Board of Educ. of Gould, ____ U.S. ____, 20 L.Ed.2d 727 (1968).[6]

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in America has. I have talked to many of them. What we are striving to do is to make progress and keep going and hope that somewhere along the line we will have achieved the — what the court has in mind. But if you will look at that court order, you will see it doesn't lay down the precise terms exactly what that means; it is a broad definition.

[6] In both *Green* and *Monroe* faculty integration was an issue before the district courts and the courts of appeals. The Supreme Court made no pronouncement with respect to faculty integration but apparently left that decision to the district courts

Immediately following the *Brown* decisions,[7] emphasis was placed on the desegregation of schools from the point of view of the students. Faculty and staff desegregation are more recent. While it is obvious that we cannot tolerate the delay which has been experienced with respect to the desegregation of students, the decisions, in dealing with faculty and staff, have indicated "the likelihood of some lessons being learned from experimentation."[8] In the case *sub judice*, the district court concluded that Montgomery County had not fully complied with its orders to effectuate desegregation of faculty, that the plan under which the school board had sought to integrate the faculty was

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involved under the remand orders of the Courts of Appeals in the two cases. The following is from the *Green* decision:

> The Court of Appeals for the Fourth Circuit, en banc, 382 F.2d 326, 338, affirmed the District Court's approval of the "freedom-of-choice" provisions of the plan but remanded the case to the District Court for entry of an order regarding faculty "which is much more specific and more comprehensive" and which would incorporate in addition to a "minimal, objective time table" some of the faculty provisions of the decree entered by the Court of Appeals for the Fifth Circuit in United States v. Jefferson County Board of Education, 372 F.2d 836, aff'd en banc, 380 F.2d 385 (1967).

20 L.Ed. at 722.

In *Monroe* the Supreme Court stated:

> The Court of Appeals for the Sixth Circuit affirmed except on an issue of faculty desegregation, as to which the case was remanded for further proceedings.

20 L.Ed.2d at 738.

In *Raney* the Court stated: "Faculties and staff were and are segregated." 20 L.Ed.2d at 730. Faculty segregation or integration is not mentioned further in the opinion.

[7] Brown v. Board of Educ. of Topeka, 347 U.S. 483 (1954), and Brown v. Board of Educ. of Topeka, 349 U.S. 294 (1955).

[8] *See* United States v. Board of Educ. of Bessemer, *supra*; United States v. Jefferson County Bd. of Educ., *supra* at 894.

not adequate, and, therefore, that another more specific plan was necessary.

It is our conclusion that the standards fixed by courts with respect to faculty desegregation cannot be totally inflexible. In none of the three recent cases cited above, *Stell, Davis,* and *Bessemer,* has this court required faculty integration according to a numerical or racial percentage ratio. On the contrary, we have declined "to enhance Jefferson's demands."[9] We do not intimate that there must always be a slavish and unswerving adherence to the precise requirements of *Jefferson,* but generally we have avidly embraced the idea of circuit-wide uniformity and have declined "to tinker with the model decree."[10] As a matter of fact, after the decision of the district court in this case, we have actually rejected the idea of requiring mathematical or racial percentage ratios in dealing with faculty and staff. We quote from the *Bessemer* decision:

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[9] *See* United States v. Board of Educ. of Bessemer, *supra.*

[10] As we pointed out in United States v. Board of Educ. of Bessemer, *supra:*

> We must steel ourselves against the importunities to import inequality by judicial modifications to meet some supposed need of a locality. One immediate consequence of such a practice would be to encourage others to try their hand. And soon we'd be back in the school business again — a role for which we are not equipped or competent to handle. The efforts to reduce the demands of *Jefferson* we've resisted so far. *See, e.g., Barnhardt v. Meridian Municipal Separate School Dist.,* 5 Cir. 1968, _____ F.2d _____ [No. 25083, April 24, 1968]; *Gaines v. Dougherty County Board of Education,* 5 Cir. 1968, _____ F.2d _____ [No. 25776, March 14, 1968]; *Stell v. Board of Public Education for the City of Savannah,* 5 Cir. 1967, 387 F.2d 486 [No. 23724, December 4, 1967].

> We are requested to do both too much and too little. The school boards with a sincerity of counsel we do not question, urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges adds to and extends *Jefferson*. We think neither alternative is wise.

We stated further:

> Even though *Jefferson* was more equivocal on faculty integration and expressed the likelihood of some lessons to be learned from experimentation, we think we should apply an even hand to deny requests to enhance *Jefferson's* demands.

The decree under review states that schools with twelve or more faculty members must begin the school year 1968-69 with at least one of every six faculty and staff members being of a different race from the majority. Because of the difficulties inherent in achieving a precise five-to-one ratio, this part of the district court's order should be interpreted to mean *substantially* or *approximately* five to one. The decree is modified to this extent in order to allow a degree of flexibility in the application of the 1968-69 interim requirements.

Additionally, whether the school board is in full compliance should not be decided solely by whether it has achieved the requisite numerical ratios.[11] The assignment of faculty and other staff to particular schools need not mirror the total faculty of the entire system as related to race or color. There must be a good faith and effective beginning and a good faith and effective effort to achieve faculty and staff desegregation for the entire system. Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective.[12] Consideration must be given to the avail-

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[11]Various district courts have entered orders that contain specific standards and at least one appellate court has approved such an order. Coppedge v. Franklin County Bd. of Educ., 273 F. Supp. 289 (E.D.N.C. 1967); Kier v. County School Bd. of Augusta, 249 F. Supp. 239 (W.D.Va. 1966); Board of Educ. of Oklahoma City v. Dowell, 375 F.2d 158 (10 Cir. 1967). Also, though the Eighth Circuit refrained from imposing an exact formula in Kelley v. Altheimer, 378 F.2d 483 (1967), it specifically called the district court's attention to percentage formulas set by other district courts.

[12]After the decision in Kelley v. Altheimer, *supra* note 11, the Eighth Circuit decided the case of Yarbrough v. Hulbert-West Memphis School Dist., 380 F.2d 962 (8 Cir. 1967). In *Yarbrough* that circuit rejected the idea of a mathematical formula and a fixed timetable and placed this interpretation upon its prior decision in *Altheimer:*

> We say in passing that this panel does not regard *Altheimer* as imposing any rigid mathematical formula which, in certain situations, could itself be arbitrary and without educational significance. We regard that case as one requiring a reluctant school board to get on with its task of achieving faculty and staff desegregation and assignment to comport with equitable and constitutional requirements divorced from racial con-

ability of teaching personnel, sound school administrative procedure, and other important factors. Consequently, under the facts and in the circumstances of this case, the order will be modified accordingly and the numerical ratios set forth in the district court's order and decree will be eliminated. This modification does not affect the five-to-one interim ratio for the school year 1968-69 as hereinabove modified.

Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. Any conduct by any school board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated. It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. School boards must not use excuses to delay the achievement of full faculty and staff desegregation. They have the responsibility and should exercise the ingenuity to achieve a proper racial balance. We have repeatedly asserted that school boards are better equipped to achieve these aims than are the courts; but, if they

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siderations. Numbers and percentages per se are not the ultimate answer but, up to a point, they touch upon realities. This, we think, is the significance of *Altheimer*.

fail or refuse to act, they should now fully realize that the courts will require action.

III

JEFFERSON DAVIS HIGH SCHOOL

From the evidence presented the district court found that the newly constructed Jefferson Davis High School, scheduled to commence operations by the 1968 school year, further perpetuated the dual school system. More specifically, the court found that the location of the school in a substantially all-white neighborhood, the enrollment capacity of the school, the publicity surrounding the recruitment of white personnel, and the scheduling of athletic events established the new high school, from its very inception, as a "white" school. Indeed, the court found that the conduct of the school board relating to the new high school was "most aggravating." In order to combat the actions of school authorities and to eradicate the impression that the new air-conditioned Jefferson Davis High School was to be an exclusively white school, the district court decreed that the school board will honor the choice of each Negro student who chooses to attend Jefferson High during the 1968-69 school year.

Appellants contend that requiring affirmative racial preference to be given to Negro students for attendance in the Jefferson Davis High School is unwarranted. They submit that the school board did not plan the new high school exclusively for white children. They state in their brief that the school board's current plans call for the employment of seven Negro

teachers in the school. Further, they point to the fact that the school will open on a "freedom of choice" basis. To date 150 Negro students have chosen to attend the high school which has a capacity of 967 students. Appellants state to the court in their brief that these Negro choices will be honored in accordance with the provisions of the school board's plan.

We have examined the record and conclude that the findings of the district court that various actions on the part of appellants created the impression that the Jefferson Davis High School was intended to serve a predominately white student body is supported by some evidence. We conclude that the district court's decree was designed to overcome the impact of the school board's discriminatory conduct as found to exist by the court. The decree requires the school board to honor the choice of each Negro student "in the absence of compelling circumstances approved by the court on the School Board's motion." We cannot be certain as to the court's intended meaning of the term "compelling circumstances." We interpret the term to embrace those reasons which are inherent in and are supported by proper standards of sound school administrative procedure, giving due consideration to all factors and circumstances which are proper to be considered in passing upon such choices.

IV

FACULTY RATIOS IN NEWLY CONSTRUCTED SCHOOLS

Appellees contend that the district court committed

error in not requiring immediate compliance with the three-to-two ratio in schools which will commence operation in 1968. They submit that there would be fewer administrative problems if complete faculty desegregation were achieved at the inception of a new school. However, in the court's order of March 2, 1968, it spoke approvingly of permitting the school board to achieve the ultimate objective of a completely desegregated school system *gradually.* The court stated that gradualism had been found to work quite successfully in the past and that gradualism was contemplated by the court in accomplishing the ultimate objective. We cannot say that the court's decision to refrain from requiring full faculty integration in new schools is erroneous.

The order of the district court is affirmed as herein modified. The Clerk is directed to issue the mandate forthwith.

AFFIRMED AS MODIFIED.

THORNBERRY, Circuit Judge, concurs except as to the modifications of numerical ratios and reserves the right to dissent as to such modifications at a later date.

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JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the District Court appealed from is modified, in accordance with the opinion of this Court, and as modified, said order be, and the same is hereby, affirmed. The Clerk is directed to issue the mandate forthwith;

It is further ordered and adjudged that the appellants, Montgomery County Board of Education, and others, be condemned to pay two-thirds of the costs in this Court, and appellees, United States of America, and others, be condemned to pay one-third of said costs for all of which execution may be issued out of the said District Court.

August 1, 1968

Thornberry, Circuit Judge, concurs except as to the modifications of numerical ratios and reserves the right to dissent as to such modifications at a later date.

Issued as Mandate: Aug 1 1968

—725-792—

Petition's for Rehearing En Banc (omitted in printing)

Dissenting Opinion of Thornberry, C.J.,
Dated October 21, 1968

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama

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(October 21, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

THORNBERRY, Circuit Judge, dissenting:

The imposition of a specific ratio for each school as the ultimate objective of faculty integration is a new step for this Circuit, but it represents the considered judgment of a district judge who was familiar with the Montgomery schools, had heard testimony, and was making an honest effort to advance the conversion to a unitary racially nondiscriminatory system as required by the Constitution. Having found the objections to this part of the decree rather unpersuasive,[1] I would affirm the district court. To the extent that the majority have entered modifications, I respectfully and in all deference dissent.

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[1] The school board acknowledges that it must desegregate faculty so that no school is identifiable as being tailored for a heavy concentration of Negro or white students, but says that specific ratios are not required by the cases and would be achieved at the cost of quality education. Also, it is predicted that there will be a general exodus of teachers to other parts of the state. The latter point seems to assume that which is not the case, namely, that school boards in other parts of the state are not obligated to integrate the faculty of each school. As I try to show by this dissent, nothing in the cases precludes numerical ratios. Indeed, the cases require district courts to devise specific provisions to implement the general requirements of *Jefferson*. The final argument that quality education will be sacrificed seems to be based more on speculation than evidence. I would point out that the district court's order requires by way of a final objective that the ratio of white to Negro teachers in each school be "substantially the same as it is throughout the system." Once the job has been largely accomplished, i.e., once the three-to-two ratio has been approached in each school, I think the language of the decree leaves room for flexibility based on administrative necessity.

In *Jefferson County*, this Court stated the importance of faculty integration as forcefully as our language permits:

> Yet until school authorities recognize and carry out their affirmative duty to integrate faculties as well as facilities, there is not the slightest possibility of their ever establishing an operative nondiscriminatory school system.

372 F.2d at 892. The general obligations of local boards were articulated, but the formulation of more specific provisions, *i.e.*, provisions that would ultimately get the job done, was left to the boards and district courts:

> It is essential that school officials (1) cease practicing racial discrimination in the hiring and assignment of new faculty members and (2) take affirmative programmatic steps to correct existing effects of past racial assignment. *If these two requirements are prescribed, the district court should be able to add specifics to meet the particular situation the case presents.* (Emphasis added)

372 F.2d at 893. In this case, the district judge saw in the record a lack of progress in the crucial area of faculty integration[2] and a need for specific directions. His solution was to set a three-to-two ratio as the ultimate objective for each school, and I see no basis in the record or the cases for modifying his determination. To be sure, he was experimenting, but I believe

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[2]The latest figures indicate that 39 of 1,365 teachers in the system are teaching in schools of the opposite race.

this to be experimentation within the spirit of *Jefferson County*.

I do not regard *United States v. Board of Education of Bessemer* as good authority for eliminating the numerical ratios. While language in that opinion suggests the Court was not disposed to deviate in either direction from the *Jefferson* decree, it must be remembered that the district judge had not directed the board to go beyond the stage of allowing voluntary transfers of teachers willing to teach in schools of the opposite race. Being unfamiliar with the school system and having before it a record over a year old, the appellate court could do no more than impose the *Jefferson* decree with emphasis on the point that the school board must reassign teachers if the desired results are not achieved through voluntary transfers. Unlike a district judge who has detailed first-hand knowledge of schools and school officials in his area, our Court simply is not equipped at this time to determine specific objectives. Where a district Judge has formulated specific provisions on the basis of a record, it is contrary to our decisions to eliminate them in favor of more general provisions. As stated by this Court in a civil rights case of another kind, a district court "has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Pullum v. Greene*, 5th Cir. 1968, ____ F.2d ____ [No. 25389, June 18, 1968], quoting from *Louisiana v. United States*, 380 U.S. 145 at 154, 85 S.Ct. 817 at 822.

Opinion on Petitions for Rehearing En Banc
Dated November 1, 1968

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama.

ON PETITIONS FOR REHEARING EN BANC

(November 1, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

PER CURIAM: The Petitions for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petitions for Rehearing En Banc are also DENIED.

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, CLAYTON* and MORGAN, Circuit Judges

BROWN, Chief Judge, with whom WISDOM, THORNBERRY, GOLDBERG, and SIMPSON, Circuit Judges join, dissenting:

I dissent from the denial of the rehearing en banc.

In pursuing the ideal of Circuit-wide uniformity which is enhanced by tinkering as little as possible "with the model decree" of *Jefferson I* and *II*[1] as was

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*Judge Clayton did not participate in the vote on rehearing en banc due to illness.

[1]United States v. Jefferson County Board of Educ., 5 Cir., 1966, 372 F.2d 836 (Jefferson I) *aff'd en banc*, 5 Cir., 1967, 380 F.2d 385 (Jefferson II), *cert. denied sub nom.*, Caddo Parish School Bd. v. United States, 1967, 389 U.S. 840, —— S.Ct. ——, —— L.Ed.2d ——.

so recently reiterated in *Bessemer*,[2] the panel decision mistakenly concludes that *Bessemer* holds that *Jefferson* and the model decree forbid the District Judge from fixing numerical-percentage ratios of teacher integration. The mistake is unfortunate because in the name of uniformity it begets disparity, not just Circuit-wide, but within the single state of Alabama.

Certainly *Jefferson* lays no such restraint on the District Judges who are on the firing line — just the opposite was declared. "We anticipate that when district courts and this Court have gained more experience with faculty integration, the Court will be able to set forth standards more specifically than they are set forth in the decrees in the instant cases. * * * [T]he district court should be able to add specifics to meet the particular situation the case presents." Jefferson I, 372 F.2d at 893-94.

Any such prohibition would be out of character with the dominant theme so simply expressed and which has now both weathered the storm of certiorari and enjoys the judicial compliment of acceptance. For we there declared, "The only school desegregation plan that meets constitutional standards is one that works." Jefferson I, 372 F.2d at 847.[3]

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[2]United States v. Board of Educ. of Bessemer, 5 Cir., 1968, ——— F.2d ———, [No. 25809, June 3, 1968].

[3]Different only in phrasing was this statement:

> "As the Constitution dictates, the proof of the pudding is in the eating: the proof of a school board's compliance with constitutional standards is the result—the performance. Has the operation of the promised plan actually eliminated segregated and token-desegregated schools and achieved substantial integration?" 372 F.2d at 894.

And in May 1968 — two months before *Carr* — that is exactly what the Supreme Court said in *Green*:[4] "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*." ___ U.S. at ___, 88 S.Ct. at ___, 20 L.Ed.2d at 724.

Unfortunately, if not tragically, the panel's decision recognizes that the School Board's indefinite plan *will not work*. "At the outset we note that the testimony of school officials indicates a need for specific directives in the instant case."[5] As corroboration of this candid confession the Court then footnotes (n. 5) extensive testimony of a responsible member of the school board. Superintendent Garrett explicitly states that he does not even know what the objectives of the earlier District Court order are, when faculty desegregation will be complete, and that he and the Board have been unable to arrive at a workable definition of the model decree's standard of a "faculty not recognizable as being staffed for a particular race."

Specifics are needed. Specifics are needed by the school administrators. Specifics are needed by the Negroes who have waited these 14 years for "a bona fide unitary system where schools are not white schools or Negro schools — just schools"[6] — and who must now wait for an undefined time for the tell-tale mark

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[4]Green v. County School Bd. of New Kent County, Va., May 27, 1968, ___ U.S. ___, 88 S.Ct. 1689, 20 L.Ed.2d 727.

[5]Montgomery Bd. of Educ. v. Carr, 5 Cir., 1968, ___F.2d___, ___ [No. 25865, August 1, 1968, slip opinion at 10-11].

[6]Jefferson I, *supra*, 372 F.2d at 890.

of segregated faculties to pass away. Specifics are needed by children, Negro and white alike, who are entitled to witness, feel, and participate in the continuing lesson of a constitutional order that is color free.

Specifics — imperatively needed — are not forbidden by *Bessemer*.

The language the Court there used[7] was geared very carefully to that case. The decree proposed by the Government had never been submitted to the District Judge. It was a decree for us as a Court of Appeals to enter as a binding mandate on the District Judge. Worse, it was a decree constructed on assumed racial statistics and ratios for application over a period of three years in no way covered or substantiated by a record which was then over a year old and stale, if not silent, on what had been happening.

But it is a mistake to think that this was an acquiescence in the Board's suggestion that it all be left as it had been in the past — and now seems to be left for Montgomery — to the good faith efforts of the school board.

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[7] "We are requested to do both too much and too little. The school boards * * * urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges, adds to and extends *Jefferson*." Bessemer, *supra*, ——F.2d at —— [No. 25809, June 3, 1968, slip opinion at 11].

But we did do four things. The first was to rule out the voluntary approach. The second was to fix an immediate target date, for the School Board to report specifically what it had done and would do for the school year 1968-69. The third was to fix the date — implicit in *Jefferson* — for full compliance, as the beginning of the school year 1970-71. Fourth, we declared that since Negroes were not to be required to wait until "C-day" — 1970-71, to see the evidence of compliance, we sounded in the plainest of words that *specifics* were now the order of the day. Specifics in June-August for the school year 1968-69. More so, specifics for the succeeding year 1969-70, leading to the climax of September 1970.[8]

Loath as Judges are to articulate constitutional goals or actions in the oft-disparaged mechanical terms of arithmetic, this is an area where it is not the spirit, but the bodies which count. Any less inevitably leaves performance to good faith. Good faith is, of course, needed. But good faith is not, and cannot be, the standard. Now, and each term, each school year it comes down to figures. The result is in figures. If the result is satisfactory it is because of numbers, not

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[8] "This leaves the problem of the ultimate 'C Day.' We think it entirely consistent with *Jefferson* to say that full compliance should be reached by the opening of the school year 1970-71. But since that is just two school years away and neither the Court nor the Negro plaintiffs should have to run the risk of an announced failure on the eve of school opening in 1970-71 it is perfectly evident that the District Judge in the forthcoming June-August proceedings must exact or impose specific targets. That will be repeated, only more so, as time marches on into 1969, then into 1969-1970." Bessemer, *supra*, ——F.2d at —— [No. 25809, June 3, 1968, slip opinion at 16].

the effort or subjective motivation. If the result is unsatisfactory it is likewise because of numbers. The numbers — i.e. the numerical percentage ratios — need to be fixed. Once fixed, the Court can always determine whether a good faith effort of compliance has been made. But good faith there is relevant to compliance, not as an element in fixing the standard.

The statistics in this record are abundant and graphic. Without passing judgment on motives or performance the figures of February 1968 either undisputed or found by the Court show that integration of the student body under the freedom of choice plan has been slight.[9] Faculty integration reveals a similar lack of numerical progress much of which, the District Judge expressly finds, is a result for which the Board must bear the full responsibility.[10]

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[9]The District Court found that of 25,000 white children and 15,000 Negro children, there were approximately 550 Negro children attending traditionally white schools. No white children were attending traditionally Negro schools. These facts, as to which there is no substantial contradiction, as well as the facts and quotations in n.10 are from the Memorandum Opinion of the United States District Court for the Middle District of Alabama, filed February 24, 1968.

[10]The teacher force comprised approximately 550 Negro teachers and 815 white teachers. Only 32 classroom teachers in the system were teaching pupils in schools that were predominantly of the opposite race. "Practically all the faculty desegregation in the system has occurred in the high schools. While there is some faculty desegregation in the elementary schools in the system, it is extremely small. There has been very little, if any, faculty desegregation in the schools located outside the City on Montgomery." Of the 26 white teachers hired since September 1967, only 6 or 7 have been placed in predominantly Negro schools. All six Negro teachers hired since that date were assigned to predominantly Negro schools. "The evidence further reflects that the defendants have failed to take any appropriate

After extensive hearings, the District Court, dissatisfied with this lack of demonstrable accomplishment, imposed specific targets for the school year 1968-69 and more specifically, delineated what would be required for satisfactory compliance in order to achieve full faculty integration. The system-wide ratio of white to Negro faculty members is approximately 3 to 2. To attain schools unidentifiable as to race the Judge laid down the standard of a system-wide faculty ratio of 3 to 2. For the school year 1968-69 the Court set an interim compliance ratio of 5 to 1. In addition, the District Court imposed for the 1968-69 school year, the system-wide 3 to 2 faculty ratio for use in assigning substitute teachers, student teachers, and night school faculty members (using the night school faculty ratio).

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steps to insure that substitute teachers are placed on a nonracial basis. No Negro has yet been a substitute teacher in a traditionally white school in Montgomery County." During the 1967-68 school year, white substitute teachers were employed over 2,000 times—only 33 of them in traditionally Negro schools. "Defendants have adopted no adequate program for the assignment of student teachers on a desegregated basis. None of the approximately 150 students teachers used in the Montgomery County School System in the fall of 1967 were assigned to schools predominantly of the opposite race. Four Negro student teachers have very recently been assigned to predominantly white schools. There has been no faculty desegregation in the night schools, operated by the Montgomery County School System." Moreover, on findings, not here challenged, the record failed to show any excuse for this lack of tangible accomplishment. "The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968-69." See n. 9 *supra*.

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But much of this was, I fear, undone by the panel. Recognizing in so many words the necessity for "specific directives in the instant case" the Court's opinion does not afford that guidance and, worse, makes drastic alterations in the Trial Judge's record-based, carefully constructed program. Although the change in the formulation of the 1968-69 ratio of 5 to 1[11] may be slight in operative effect it does not stand alone. Completely eliminated is the 1968-69 ratio of 3 to 2 for substitute, student, and night school teachers. More significant is the complete elimination of the 3 to 2 ratio as the *Jefferson* goal of a school "unidentifiable as to race." Indeed, it is rejected for all time under the vague notions[12] which permit subjective discrimination of the kind so characteristic of the regional glacial movement toward integration. Right along with this is the failure, either on original disposition or now in response to an express request n the motion for rehearing, that full compliance be required by the opening of the school year 1970-71 as fixed by "C day" in *Bessemer*.

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[11] "Because of the difficulties inherent in achieving a precise five-to-one ratio, this part of the district court's order should be interpreted to mean *substantially* or *approximately* five to one. The decree is modified to this extent in order to allow a degree of flexibility in the application of the 1968-69 interim requirements." Carr, *supra*, ——F.2d at —— [No. 25865, August 1, 1968, slip opinion at 15).

[12] "Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective. Consideration must be given to the availability of teaching personnel, sound school administrative procedure, and other important factors." Carr, *supra*, ——F.2d at —— [No. 25865, August 8, 1968, slip opinion at 16-17].

Within scarcely 90 miles that separates the Birmingham area from Montgomery there are two separate standards and, perhaps, two separate hopes.

We owe both to those to be commanded by, and those who enjoy the benefit of, court direction, an obligation to speak with a single voice. Whatever might be the ultimate views on the merits, law and all suffer when the Court, from "an inability to muster a majority,"[13] cannot make up its institutional mind.

DYER, Circuit Judge:

I join in dissenting to the denial of a rehearing en banc.

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[13]Carter v. United States, 5 Cir., 1963, 325 F.2d 697, 707 (en banc) (dissenting opinion), *cert. denied*, 1964, 377 U.S. 946, ——S.Ct. ——, 12 L.Ed. 2d 308.

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Clerk's Certification as to Record, Dated November 25, 1968 (omitted in printing)

—808—

Order Granting Certiorari

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

UNITED STATES OF AMERICA,

Petitioner,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, et al.

and

ARLAM CARR, JR., et al.,

Petitioners,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, et al.

The petitions for writs of certiorari are granted. The cases are consolidated and a total of two hours is allotted for oral argument.

March 3, 1969

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion and order of the district court entered on February 24, 1968 (App. A, *infra*, pp. 12–32), and the supplementary orders entered on March 2, 1968 (Apps. B and C, *infra*, pp. 33–43, 44–46), are not reported. The majority opinion of the court of appeals panel (App. D, *infra*, pp. 47–66) is reported at 400 F. 2d 1; the dissenting opinion (App. E, *infra*, pp. 67–70) is not yet reported. The orders of the court of appeals denying rehearing and denying rehearing *en banc* and the opinion dissenting from the denial of rehearing *en banc* (App. F, *infra*, pp. 71–80) are not yet reported.

JURISDICTION

The order of the court of appeals denying rehearing *en banc* was entered on November 1, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in a school district which is under a constitutional obligation to desegregate its students and faculties, and which has taken inadequate steps under a prior general order to desegregate, the district court properly required the achievement of a distribution of faculty members such that all schools would have approximately the same proportion of white and Negro teachers.

STATEMENT

1. *The decision of the district court.* This school desegregation suit was brought in the Middle District of Alabama by Negro parents and school children in 1964. The district court *sua sponte* named the United States *amicus curiae* with the rights of a party.[1] After a hearing, the district court found that the defendant school board operated a racially segregated school system and, on July 31, 1964, entered its original decree requiring desegregation. A more comprehensive desegregation plan was required by an order of March 22, 1966. The latter order specifically directed the school board to hire and assign teachers on a nonracial basis and to take affirmative steps "to

[1] There has never been any challenge by respondents to the authority of the district court to take this step. In any event, the United States is now authorized to intervene in the suit under Section 902 of the Civil Rights Act of 1964, 42 U.S.C 2000h-2.

solicit and encourage teachers" to transfer to desegregated positions and "to eliminate the effects of past [faculty] discrimination." However, for purposes of uniformity within the State and Circuit, that order was amended on August 18, 1966, in light of the court of appeals' decision in *Davis* v. *Board of School Commissioners of Mobile County*, 364 F. 2d 896 (C.A. 5) to allow the school board "until the school year 1967–68 to end this present policy of hiring and assigning teachers and other school personnel according to race." On June 1, 1967, the district court entered a decree specifically requiring faculty desegregation in the language of the model decree formulated by the Fifth Circuit in *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, adopted on rehearing *en banc*, 380 F. 2d 385, certiorari denied, 389 U.S. 840.

On August 17, 1967, and February 7, 1968, the United States filed motions, in which the private plaintiffs joined, seeking further faculty desegregation.[2] After hearings on these motions, the district court found that of the 550 Negro and 815 white teachers in the system only 32 were on faculties where their race was in the minority, most of them assigned to teaching high school grades within the city of Montgomery. The court noted that "little, if any," faculty desegregation had occurred in the system's schools outside the city itself. After the entry of the 1967 order to desegregate faculties, 75 newly hired teachers had been assigned or transferred to faculties

[2] The motion of February 7, 1968, also sought the desegregation of the athletic program, but that issue was not involved in the appeal and is not raised here.

where their race was in the majority. Of the 26 white and 6 Negro teachers hired during the first half of the 1967-68 school year, six white teachers had been assigned to schools predominantly of another race. No desegregation of the substitute teachers, student teachers or night school faculties had occurred and none had been planned.

Finding that "the defendants have failed to discharge the affirmative duty the law places upon them to eliminate the operation of a dual school system," the district court concluded that it was "necessary and entirely appropriate to establish now more specific requirements" (p. 20, *infra*). In an order entered on February 24, 1968, the district court directed the school board, as an "ultimate objective" in disestablishing faculty segregation, to "be guided by the ratio of Negro to white faculty members in the school system as a whole" and ordered the board to achieve a racial ratio at each school which would be "substantially the same" as the racial ratio of teachers throughout the system. The district court required specific partial compliance for 1968-69, but denied the government's request that the ultimate ratio be implemented immediately in three schools being opened for the first time.

2. *The decisions of the court of appeals.* The school board appealed and the plaintiffs and United States cross-appealed from the denial of the request for the immediate complete desegregation of faculties at newly opened schools. A panel of the court of appeals (Judge Thornberry dissenting) modified that part of the district court's order which set forth the ultimate objective. It held that the standard of "good faith

and effective effort" was sufficient on the grounds that a proportional requirement would not permit consideration of "the availability of teaching personnel, sound school administrative procedure, and other important factors," and because the entry of any more specific order would be "to tinker with the model decree" of the *Jefferson case* (pp. 60-63, *infra*).

Petitions for rehearing and for rehearing *en banc* were denied by the panel and by a 6-to-6 vote of the active circuit judges.

REASONS FOR GRANTING THE WRIT

1. The standard for faculty desegregation ordered by the district court—that each school's faculty have approximately the same proportion of white and Negro teachers (*i.e.*, that each reflect the racial distribution of teachers throughout the school system)—is the appropriate yardstick for measuring whether proven faculty segregation has been disestablished. The constitutional requirement is that the dual school system be eliminated, and this includes the dual system of racial faculty assignment. Nothing less is required than (1) "that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school," *United States* v. *Jefferson County Board of Education*, *supra*, 380 F. 2d at 394, and (2) that the faculty of each school be placed approximately in the condition it would have had if the assignments of teachers had always been made without reference to race.

The approximate proportional formula ordered by the district court would accomplish these twin goals.

The racial indentifiability of school facilities would be erased because the racial make-up of all faculties would be substantially alike. Moreover, the resulting racial proportions would approximate the racial composition that would have resulted from a nonracial random distribution of teachers in the past, and would thereby constitute total disestablishment of faculty segregation.[4]

We emphasize that the standard adopted by the district court was to be utilized only in undoing the present consequences of past unconstitutional assignment. It was not suggested or adopted as a requirement for school districts which have not practiced racial segregation in the past. Nor was it intended as a means of achieving racial balance in school faculties.

We also note that there is no constitutional or legal infirmity in requiring a school board to consider race in order to overcome prior racial discrimination.[4] In

[4] Such an ultimate objective for eliminating the effect of past racial assignments does not, of course, foreclose adjustment for educational or administrative factors such as availability of personnel. All that would be required is that, as the district court ordered, the proportion be "*substantially* the same." This is not an inflexible ratio, and in those instances where exceptions would be justified, such exceptions could be provided for.

"* * * It would be stultifying to hold that a board may not move to undo arrangements artificially contrived to effect or maintain segregation, on the ground that this interference with the status quo would involve 'consideration of race.' When school authorities, recognizing the historic fact that existing conditions are based on a design to segregate the races, act to undo these illegal conditions—especially conditions that have been judicially condemned—their effort is not to be frustrated on the ground that race is not a permissible consideration. * * *" *Wanner* v. *County School Board of Arlington County*, 357 F. 2d 452, 454 (C.A. 4).

devising a remedy to erase the racial identity of "white" and "Negro" faculties and to disestablish the state-created pattern of racially segregated faculty assignments, race may be taken into consideration. *Wanner* v. *County School Board of Arlington County*, 357 F. 2d 452 (C.A. 4); *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 876 (C.A. 5), adopted on rehearing *en banc*, 380 F. 2d 385, certiorari denied, 389 U.S. 840.

2. The rejection of the district court's objective standards and the substitution of the standard of "good faith and effective effort" conflicts with this Court's holding in *Green* v. *County School Board*, 391 U.S. 430, 439, that an acceptable desegregation plan must be one that "promises realistically to work *now*." This Court has held that faculty desegregation is an appropriate component of a school desegregation plan, and that students in public schools have a constitutional right to attend schools where faculties have not been assigned on the basis of race. *Bradley* v. *School Board*, 382 U.S. 103; *Rogers* v. *Paul*, 382 U.S. 198. The test adopted by the panel of the court of appeals does not insure that desegregation will be achieved promptly. Rather, it provides added opportunities for more extended delay in faculty desegregation. As stated in the dissent from denial of rehearing, the district court's standard was rejected by the panel "under the vague notions which permit subjective discrimination of the kind so characteristic of the regional glacial movement toward integration" (p. 79, *infra*).

3. The questions presented warrant review because of the substantial uncertainty engendered by the decision below. Within the Fifth Circuit, which includes six of the States most affected by this Court's school desegregation decisions, the 6-to-6 division of the court of appeals has left unresolved the judicial acceptability of the district court's remedy. As pointed out in the dissent from the denial of the rehearing, the acceptance of the district court standard would contribute to the circuit-wide uniformity which the Fifth Circuit deemed desirable in *United States* v. *Jefferson County Board of Education*, *supra* (pp. 73, 79-80, *infra*). In *United States* v. *Board of Education of the City of Bessemer*, 396 F. 2d 44 (C.A. 5), the court of appeals set 1970 as the date for complete faculty desegregation. The uncertainty caused by the even division of the court below, added to the vagueness of the standard adopted by the panel, will render it difficult, if not impossible to achieve "complete" faculty desegregation at any time—much less by 1970.

Moreover, the issue presented by this case is of substantial importance in other circuits. It is a matter that concerns virtually all school desegregation cases, in the North as well as in the South. See, *e.g.*, *United States* v. *School District 151 of Cook County, Illinois*, 286 F. Supp. 786, 798 (N.D. Ill.). For even school districts which have not practiced racial segregation in the assignment of students may have assigned teachers on a racial basis and may, therefore, have to institute remedial measures.

4. The decision of the panel below conflicts with decisions of courts of appeals for three other circuits.

Both the Tenth and the Fourth Circuits have approved school desegregation plans which require, as a remedy to eliminate faculty segregation, "the same approximate percentage of non-white teachers in each school as there now is in the system." *Dowell* v. *School Board of Oklahoma City*, 244 F. Supp. 971, 978 (W.D. Okla.), affirmed, 375 F. 2d 158, 167 (C.A. 10), certiorari denied, 387 U.S. 931; *Coppedge* v. *Franklin County Board of Education*, 273 F. Supp. 289, 300 (E.D. N. Car.), affirmed, 394 F. 2d 410 (C.A. 4). The Court of Appeals for the Eighth Circuit has declined to require such a formula, but has suggested its use as a standard "which comports with *Brown*." *Kelly* v. *Altheimer School District No. 22*, 378 F. 2d 483, 498, n. 24.[8]

5. The decision of the panel significantly weakens the authority of district courts to use their equitable powers, as contemplated by this Court in *Brown* v. *Board of Education*, 349 U.S. 294, 300–301, to fashion

[8] Another district court in the Fourth Circuit has used this same proportional standard, pointing out that "Such a guideline can not be rigorously adhered to, of course, but the existence of some standard is necessary in order for the Court to evaluate the sufficiency of the steps taken by the school authorities pursuant to the Court's order." *Kier* v. *County School Board of Augusta Co.*, 249 F. Supp. 239, 247 (W.D. Va.).

In *Parborough* v. *Hubert-West Memphis School District No. 4*, 380 F. 2d 962, 968, the Court of Appeals for the Eighth Circuit, expressing its confidence in the trial judge, declined to *require* the *Dowell* formula, "although not without some hesitation."

and effectuate decrees necessary for the elimination of dual public school systems. The district court has the obligation "to assess the effectiveness of a proposed plan in achieving desegregation" and to see to it "that state-imposed segregation has been completely removed." *Green* v. *County School Board, supra,* 391 U.S. at 439. The measure taken by the district court in this case was an appropriate one to achieve these objectives.

The district court found that only 2.4 per cent of the teachers (in a system where the ratio of white to Negro teachers was approximately 3 to 2) were teaching on faculties where their race was in a minority. This was true despite the fact that the school system had been under an obligation to desegregate since 1954, and under court orders to do so since 1964, including a 1967 order specifically requiring the nonracial assignment of teachers and the elimination of past faculty segregation. The associate superintendent himself testified in the district court hearing, as quoted in the court of appeals panel opinion (pp. 57–58, *infra*) that he did not know what was required to achieve faculty desegregation. In light of this evidence and testimony, the district court properly concluded that a clearly stated objective was necessary. That conclusion should not have been disturbed by the court of appeals.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN GRISWOLD,
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Attorneys.

DECEMBER 1968.

APPENDIXES

APPENDIX A

In the United States District Court for the Middle District of Alabama, Northern Division

ARLAM CARR, ET AL., PLAINTIFFS

v.

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR., FRED BEAR, GEORGE A. DOZIER, DR. J. EDWARD WALKER, ISABELLE B. THOMPSON AND DR. ROBERT PARKER, MEMBERS OF THE MONTGOMERY COUNTY BOARD OF EDUCATION; AND WALTER MCKEE, SUPERINTENDENT OF EDUCATION OF MONTGOMERY COUNTY, ALABAMA, DEFENDANTS

UNITED STATES OF AMERICA, AMICUS CURIAE.

Civil Action No. 2072–N

MEMORANDUM OPINION

This cause is now submitted upon the motions of the United States filed August 17, 1967 and February 7, 1968, in both of which the United States requested this Court to require defendants to take further steps designed to disestablish the dual school system in Montgomery County, Alabama. Each of these motions seeks further faculty desegregation and the motion of February 7, 1968, asks this Court to require defendants to cease operation of their athletic program on a racially segregated basis and to take other steps designed to

insure that certain new schools that have been and are being constructed as a part of the Montgomery County School System are operated on a desegregated basis. The plaintiffs join the United States in each of said motions.

This Court conducted a hearing on the Government's motion of August 17, 1967, in September, 1967. No formal findings or conclusions were made at that time by reason of the fact that the 1967–68 school year had already commenced, and the matter was therefore held in abeyance. On February 9, 1968, a hearing was conducted on the Government's second motion and the motion of the plaintiffs filed the same date wherein the plaintiffs seek more specific relief concerning transportation to the new schools.

Upon consideration of the evidence and the several exhibits thereto, this Court now makes the appropriate findings of fact and conclusions of law, embodying the same in this memorandum opinion. The original decree requiring desegregation of the public schools in Montgomery County, Alabama, was entered by this Court on July 31, 1964. After making appropriate findings and conclusions to the effect that the Montgomery County Board of Education was operating a segregated school system based upon race, this Court entered an injunction that enjoined the defendants from failing to provide public school education for Negroes, and other members of their class, in a school or schools that were not operated on a racially segregated basis, and from failing to take immediate steps, to be effective for the school term commencing September, 1964, to desegregate the 1st, 10th, 11th and 12th grades in the public schools of Montgomery County, Alabama. In this decree, this Court approved a freedom-of-choice plan that had been proposed by the defendants as a means for discharging the affirm-

ative duty placed upon them. *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954), and *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1955). On March 22, 1966, this Court by formal order required the Montgomery County Board of Education to file a more formal and comprehensive plan for desegregation of the public school system in Montgomery County. This plan provided for complete desegregation of the schools for each grade in each school commencing with the September, 1967 school term; the plan also provided with regard to services, facilities, activities and programs:

> A student shall have full access to all services, facilities, activities, and programs (including transportation, athletics, and other extracurricular activities) that may be conducted or sponsored by, or affiliated with the schools of the system. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

Further, the plan provided with regard to faculty and staff:

> Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.
>
> In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a

racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

Teachers and other professional staff will not be dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance, where one or more teachers or other professional staff members are to be displaced as a result of desegregation or school closings, they shall be transferred to any position in the system where there is a vacancy for which they are qualified.

At the time this Court entered its order in July, 1964, there were in attendance approximately 15,000 Negro children and approximately 25,000 white children in the Montgomery County School System. The system was completely segregated by reason of race. No faculty desegregation was ordered until the commencement of the 1967 school year.[1] The evidence

[1] The order made and entered in this case on March 22, 1966, required the Montgomery County Board of Education to commence the process of desegregating the faculty and professional staffs commencing with the school year 1966–67. However, on August 16, 1966, in the Mobile, Alabama school case of *Birdie Mae Davis, et al.* v. *Board of School Commissioners of Mobile County, et al.*, 364 F. 2d 896, the United States Court of Appeals for the Fifth Circuit allowed the Mobile, Alabama County Board of Education until the school year 1967–68 to end its policy of hiring and assigning teachers and staff according to race. On August 18, 1966, this Court entered an order reciting, "Uniformity, as well as fairness, requires this Court upon its

now presented reflects that during the current school year the student population continues to be about the same as in 1964 and there are now approximately 550 Negroes attending, through the freedom-of-choice procedure, traditionally white schools. No white children are attending traditionally Negro schools. As of February 9, 1968, 32 classroom teachers in this system were teaching pupils in schools that are predominantly of the opposite race. Defendants employ approximately 550 Negro teachers and approximately 815 white teachers in the system. Practically all the faculty desegregation in the system has occurred in the high schools. While there is some faculty desegregation in the elementary schools in the system, it is extremely small. There has been very little, if any, faculty desegregation in the schools located outside the City of Montgomery.

Since the order of this Court of June 1, 1967, defendants have assigned or transferred approximately 75 new teachers to faculties where their race was in the majority. Since the opening of school in September, 1967, defendants have hired approximately 32 new teachers—26 white and 6 Negro. Of the 26 new white teachers, only six or seven have been placed in predominantly Negro schools. All six Negroes were assigned to predominantly Negro schools. The evidence further reflects that the defendants have failed to take any appropriate steps to insure that substitute teachers are placed on a nonracial basis. No Negro has yet been a substitute teacher in a traditionally white school in Montgomery County.

own motion . . . to amend its order of March 22, 1966, to the extent that the Montgomery County School Board of Education be allowed until the school year of 1967-68 to end this present policy of hiring and assigning teachers and other school personnel according to race."

Negro substitutes were used over 1,500 times in Negro schools during the first semester of the 1967-68 school year. During the same period, white substitute teachers were employed over 2,000 times, only 33 of them in traditionally Negro schools. There are approximately 162 white substitute teachers and 63 Negro substitute teachers available for use in the Montgomery County School System. Twenty-eight of the white substitute teachers whose names are on this list have, with defendants' permission, limited themselves to working only in predominantly white schools. Defendants have adopted no adequate program for the assignment of student teachers on a desegregated basis. None of the approximately 150 student teachers used in the Montgomery County School System in the fall of 1967 were assigned to schools predominantly of the opposite race. Four Negro student teachers have very recently been assigned to predominantly white schools. There has been no faculty desegration in the night schools operated by the Montgomery County School System.

The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968-69.

The evidence in this case reflects that the athletic programs are an integral part of the operation of the public schools in the Montgomery County School System. The Alabama High School Athletic Association is an association made up of approximately 357 Alabama high schools traditionally maintained for white students and the Alabama Interscholastic Athletic Association is an association made up only of Alabama

high schools traditionally maintained for Negro students. Each of these athletic associations has adopted rules for the scheduling of athletic contests by its members which have the effect of penalizing member schools if they play athletic contests with schools predominantly of the opposite race. The manner in which these associations accomplish this is through the promulgation of a rule to the effect that if any member school plays a nonmember school, it is subject to suspension or penalty. Thus the Montgomery County Board of Education, acting through its various school principals and coaching staffs, has allowed its traditionally white schools and its traditionally Negro schools to become members of the white and Negro associations, respectively, thereby placing them under the restrictive rules of these associations. Furthermore, the evidence reflects that the defendants through their agents—the principals and coaching staffs—have adopted a policy of scheduling interscholastic athletic contests for its traditionally white schools only with other traditionally white schools, and for its traditionally Negro schools, only with other traditionally Negro schools. The evidence in this case is clear that this manner of operating the athletic programs has had and continues to have the effect of influencing the choice of students within the system.

The evidence further reflects that the defendants have continued to construct new schools and expand some existing schools; certainly, there is nothing wrong with this except that the construction of the new schools with proposed limited capacities geared to the estimated white community needs and located in predominantly white neighborhoods and the expansion of the existing schools located in predominantly Negro neighborhoods violate both the spirit and the letter of the desegregation plan for the Montgomery County

School System. Examples of this are the construction of the Jefferson Davis High School, the Peter Crump Elementary School and the Southlawn Elementary School—all in predominantly white neighborhoods—and the expansion of Hayneville Road School and the Carver High School, both in predominantly Negro neighborhoods. The location of these schools and their proposed capacities cause the effect of this construction and expansion to perpetuate the dual school system based upon race in the Montgomery County School System.

As to transportation, the defendants have failed to eliminate the bus routes where there exists overlapping and duplication based upon race. Thus the defendants have continued to perpetuate the dual school system through their transportation system. The defendants in designating three new schools located in predominantly white neighborhoods, viz., Jefferson Davis High, Peter Crump Elementary and Southlawn Elementary, as "nontransported" schools (schools to which no transportation is provided) are also attempting to further perpetuate the dual school system.

One of the most aggravating courses of conduct on the part of the defendants and their agents and employees relates to the new Jefferson Davis High School to be located in the City of Montgomery and operated commencing with the school year 1968–69. The defendants in locating this school placed it in a predominantly white section of Montgomery. The evidence reflects that in determining the capacity of the school the approximated the number of white students residing in the general vicinity and constructed the school accordingly; they have adopted a school name and a school crest that are designed to create the impression that it is to be a predominantly white school; they have hired a prihcipal, three coaches and a band

director, all of whom are white; they have actively engaged in a fund-raising campaign for athletic and band programs only through white persons in the community; they have contacted only predominantly white schools for the scheduling of athletic events and they have made tentative arrangements to join the Alabama High School Athletic Association—the white association. Extensive publicity has been released concerning the white faculty members and the football schedule with all white schools. Discussion of the athletic program has been held by the new school officials only with white athletes. The dissemination of information about spring football practice in pamphlet form has been made by the school staff only to white persons.

All of this means that the defendants have failed to discharge the affirmative duty the law places upon them to eliminate the operation of a dual school system. Under such circumstances this Court considers it necessary and entirely appropriate to establish now more specific requirements governing minimum amounts of progress in the future in these several areas. In establishing these rules, it should be emphasized that strong consideration is given to the ratio of white to Negro students; however, in view of the fact that the plaintiffs and the United States have as of February 21, 1968, filed a motion to supplement the March 22, 1967, order of the three-judge court in *Lee, et al.* v. *Macon County Board of Education, et al.*, 267 F. Supp. 458, in the area of school athletic programs, this Court will not at this time make any further specific findings, conclusions or order concerning the dual athletic program operated by the Montgomery County School System and will not at this time outline any steps that the defendants may be required to take in order to eliminate such

practice. This phase of the matter as now presented will be reserved pending hearing and disposition of the motion in *Lee, et al.* v. *Macon County Board of Education, et al.*, which is presently scheduled for a hearing March 9, 1968.

The manner in which the defendants have constructed new schools, the location and proposed capacity of these schools, and the manner in which the defendants have expanded Negro schools and the location of these Negro schools make it clear that the effect of these new constructions and the effect of the expansions have been designed to perpetuate, and have the effect of perpetuating, the dual school system in the Montgomery County schools. Furthermore, the operation of the school bus routes as presently operated by the defendants continues to violate the Fourteenth Amendment of the Constitution. Because of these factors this Court is under a duty and an obligation to outline and specify certain affirmative steps that must be taken by the defendants to eliminate the dual school system based upon race and to overcome the effects of certain efforts that have been made, as above outlined, to perpetuate this dual school system.

In implementing the requirements of this Court's orders heretofore made in this case and the supplemental requirements outlined herein and in the attached supplemental desegregation plan, the Montgomery County School Board, the individual members thereof, and particularly the principals of the several schools should be guided by three *caveats:*

First, the law will not tolerate any further undue delay in the desegregation of the public school systems. It has been almost fourteen years since school boards were placed under an affirmative duty to disestablish their dual school systems based upon race.

Brown v. *Board of Education of Topeka, supra.* The Courts have recently—particularly in the Fifth Circuit—emphatically stated that no further delays in the desegregation process would be allowed. This was recognized and reaffirmed by the three-judge court in *Lee* v. *Macon, supra,* in its order of April 15, 1967 (unreported), when it was stated:

> Further delay in the desegregation of Alabama public schools is inconsistent with existing law. The Supreme Court of the United States in *Goss* v. *Board of Education,* 373 U.S. 683 (1963), stated: "Delays in desegregating school systems are no longer tolerable." See also *Calhoun* v. *Latimer,* 377 U.S. 263; *Watson* v. *City of Memphis,* 373 U.S. 526, and *Bradley* v. *School Board of City of Richmond,* 382 U.S. 103 (1965). The law is clear that state authorities are "duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." *Cooper* v. *Aaron,* 358 U.S. 1, 7. Following this philosophy, the United States Court of Appeals for the Fifth Circuit has refused to permit delay in this area. *Davis* v. *Board of School Commissioners of Mobile County, Alabama,* 322 F. 2d 356 (1963); *Singleton* v. *Jackson Municipal Separate School District,* 348 F. 2d 729 (1965); *United States* v. *Wilcox County Board of Education,* 366 F. 2d 769 (1966):

Second, in the area of desegregating the faculties and staffs in the several schools in the system, the defendants may not justify or excuse any further delay upon the ground that some of the teachers are reluctant to teach in schools predominantly of the opposite race. Again, the controlling legal principle in connection with this phase of the problem was announced by the three-judge court in *Lee* v. *Macon, supra,* in its order of June 14, 1967 (unreported),

wherein the Court stated that desegregation of facilities and staffs must be accomplished "either by inducing voluntary transfers by teachers, the filling of vacancies, or, if they cannot achieve faculty desegregation by such means, then by the assignment and transfer of teachers from one school to the other."

Third, that unless the "freedom-of-choice" plan is more effectively and less dilatorily used by the defendants in this case, this Court will have no alternative except to order some other plan used. Caution in this area of the problem was expressed by the three-judge court in *Lee* v. *Macon, supra,* in its order of March 22, 1967, when it stated:

> Invariably in this area of our country the "freedom-of-choice" plan has been chosen by the courts and the school systems themselves as the method to effectuate the requirements of the Fourteenth Amendment in the field of desegregation of public educational facilities. This is the plan which this Court will require—for the time being—these defendant officials to implement throughout the State of Alabama.[27] This Court recognizes that in the freedom-of-choice plan there are many administrative complexities. It may be that these administrative problems will make some other method advisable in the future. It may well be that the freedom-of-choice method of desegregation will not fully and completely disestablish the dual public school system based upon race.[28] However, for the time being, provided that all of the factors designed to influence and having the effect of influencing choice be eliminated, the freedom-of-choice plan will be put into effect upon a statewide basis. It should be emphasized that, if choice influencing factors are not eliminated, freedom of choice is a fantasy. A "freedom-of-choice" plan ordered by a court or adopted by school authorities is not an end in itself; it

is but a means to an end. The plan must operate in such a manner as to meet the constitutional mandate of the Fourteenth Amendment. As was stated in the concurring opinion in *Bradley* v. *School Board*, 345 F. 2d 310, 323:

> Affirmative action means more than telling those who have long been deprived of freedom of educational opportunity, "you now have a choice." In many instances the choice will not be meaningful unless the administrators are willing to bestow extra effort and expense to bring the deprived pupils up to the level where they can avail themselves of the choice in fact as well as in theory * * * The district judge must determine whether the means exist for the exercise of a choice that is truly free and not merely pro forma.

[21] The reasons are obvious why school officials have not chosen other plans such as the "neighborhood school" plan, for under such a plan white students would be immediately required to attend Negro schools located in their neighborhoods.

[22] The United States Supreme Court has not yet ruled on the freedom-of-choice method of ending racial segregation in the field of public education. However, *Goss* v. *Board of Education*, 373 U.S. 683 (1963), has been cited as support for such a plan. See *Bradley* v. *School Board*, 345 F. 2d 310, 318 (4th Cir. 1965).

Several "freedom-of-choice" plans for desegregating dual school systems based upon race have recently been found as "not operating in a constitutionally acceptable manner." *Coppedge* v. *Franklin County Board of Education* (E.D. N.D. Aug. 1967), 273 F. Supp. 289, and *Moses* v. *Washington Parish School Board* (E.D., La., Oct. 19, 1967), 276 F. Supp. 834.

In accordance with the foregoing, it is the Order, Judgment and Decree of this Court that the defend-

ants, their agents, officers, employees and successors, and all those in active concert or participation with them, shall adopt and implement the attached supplement to the desegregation plan herein ordered on June 1, 1967.

This Court specifically retains jurisdiction of this cause.

Done, this the 24th day of February, 1968.

FRANK M. JOHNSON, JR.,
United States District Judge.

SUPPLEMENT TO DESEGREGATION PLAN

I. FACULTY AND STAFF

A. *Statement of Objective.*

In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

B. *Schedule for Faculty Desegregation.*

1. *1968–69.* At every school with fewer than 12 teachers, the board will have at least two full-time

teachers whose race is different from the race of the majority of the faculty and staff members at the school.

At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for the time being, other specific faculty and staff desegregation requirements for future years.

C. *Means of Accomplishment.*

If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filling vacancies, then it will do so by the assignment and transfer of teachers from one school to another.

D. *Substitute Teachers.*

Commencing March 1, 1968, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

Commencing with the 1968–69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only at predominantly white schools or only at predominantly Negro schools.

E. *Student Teachers.*

Commencing March 1, 1968, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

F. *Night Schools.*

Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program.

II. NEW CONSTRUCTION

The school board will obtain approval from the State Superintendent of Education prior to letting contracts for or proceeding with the construction of any new school or any additions to an existing school. The State Superintendent will, upon receipt of such proposals, take appropriate action on said proposals as required by the March 22, 1967, decree entered in *Lee, et al.* v. *Macon County Board of Education, et al.*, 267 F. Supp. 458, 470–472, 480–481.

III. TRANSPORTATION

The school board will adopt nondiscriminatory bus routes and criteria governing the availability of bus transportation to students. Race will not be a basis for assigning students to school buses, and overlapping and duplicative bus routes based on race will be eliminated. By June 1, 1968, the school board will file with the Court the criteria it has adopted and a map or maps of bus routes for the 1968–69 school year. Along with the map, the school board will file a report indicating for each bus in its system, the number of students by race that the bus is expected to transport, the capacity of the bus, the number of miles the bus is expected to travel one way, and the school or schools the bus will serve. The board will serve the United States, as amicus curiae, with copies of the criteria, the report, and the map or maps.

IV. JEFFERSON DAVIS HIGH SCHOOL, PETER CRUMP SCHOOL, AND SOUTHLAWN SCHOOL

The school board will take affirmative action to eradicate the effect of the efforts it and its employees have made to create the impression throughout the school system that Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School are to be used primarily by white students. The action will include, but not be limited to, the following steps:

A. *Letter to Eligible Students.*

By March 1, 1968, the school board will send to every student presently enrolled in grades 9, 10 and 11 in the public schools of Montgomery County a letter such as that set forth in Attachment A to this supplementary plan. A copy of the information sheet on choice forms and spring football practice, such as has heretofore been distributed to white students and parents, will be enclosed with each letter addressed to a male student.

B. *Visits to Schools.*

In the company of either the principal or a coach previously assigned to Jefferson Davis High School, that school's new coach will visit each high school and junior high school in Montgomery. They will inform the male students in grades 9, 10 and 11 at those schools of the rules concerning their eligibility to participate in athletics at Jefferson Davis High School. They will also inform the athletes when and where spring football practice is to begin for the new high school and of the procedures they should follow in order to participate. They will also make themselves available to answer any questions these students may have about Jefferson Davis High School.

C. *Transportation.*

The school board will, on the choice forms, offer to provide transportation to Jefferson Davis High School, Peter Crum Elementary School and Southlawn Elementary School, until further order of this Court. The choice forms will indicate that transportation is to be provided to those schools. The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee or Lanier High School, in the absence of compelling circumstances approved by the Court on the school board's motion.

D. *Honoring Choices.*

The school board will honor the choice of each Negro student who chooses to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the Court on the school board's motion.

V. REPORTS

The school board will report to the Court every three months, beginning March 15, 1968, the steps taken to comply with the desegregation plan ordered into effect June 1, 1967, and with this supplementary plan. Plaintiffs and the United States will be served with copies of the reports.

A. *Reports Previously Ordered.*

The school board will include in reports filed each June 15 the "report on choice period" and "report on faculty assignments" described in Part VII of the plan ordered June 1, 1967. The report after school opening, also described in Part VII of the 1967 order, will become part of the reports filed each September 15.

B. *Faculty.*

1. *New teachers.* Each report filed will list each new teacher hired during the preceding three months and give his race and the school to which he is assigned.

2. *Substitute teachers.* Each report will list the number of days taught by substitute teachers, by race and by school, during the preceding three months, with the exception that the report filed March 15, 1968, will give this information only from the date of the order to which this supplementary plan is attached.

3. *Student teachers.* Each report will show by race the number of student teachers assigned during the preceding three months to each school having student teachers.

4. *Night schools.* Commencing June 15, 1968, each report will show by race the number of faculty and staff members assigned to the night program of each school having a night program.

C. *Transportation.*

Each report filed each year on September 15 will show, for each school bus, the number of students transported by race, the capacity of the bus, the number of miles it travels one way, and the school or schools it serves.

D. *Jefferson Davis High School and Other New Schools.*

The reports of March 15, 1968, June 15, 1968, and September 15, 1968, will show the steps the school board has taken to comply with Part V of this supplementary plan.

[Attachment A]

MONTGOMERY PUBLIC SCHOOLS

DATE: _____.

Dear Student:

We are sending you this letter to inform you that you are eligible to attend Jefferson Davis High School if you choose to do so. The choice period for Montgomery County schools begins March 1, 1968, and you or your parents will be receiving a choice form within the next few days.

Jefferson Davis High School is a new school in southeast Montgomery, to be opened in the fall of 1968. A senior high school only, it will have grades ten through twelve. Bus transportation to the school will be available to students who live outside the City of Montgomery and more than two miles from the school provided the student exercising such choice lives nearer Jefferson Davis than either Lee or Lanier High School.

We are in the process of forming a faculty and staff for the new school now. It will include a substantial number of persons of both races.

All students will be welcome to participate in all extra-curricular activities, including athletics and band, on the same basis and without regard to race. Spring football is scheduled to begin March 4, 1968, at Cloverdale Junior High School. Two days before that, Saturday, March 2, at 9:30 a.m., prospective players will be fitted for equipment at the Cloverdale Community Center in Montgomery. All athletes who choose to attend Jefferson Davis High School are

welcome to participate. You should read the enclosed instruction sheet (sent only to male students) if you are interested.

Sincerely,

_____ _____,

Superintendent, Montgomery Public Schools.

Appendix B

In the United States District Court for the Middle District of Alabama, Northern Division

Arlam Carr, et al., plaintiffs

vs.

Montgomery County Board of Education; James W. Rutland, Jr., Fred Bear, George A. Dozier, Dr. J. Edward Walker, Isabelle B. Thomasson and Dr. Robert Parker, Members of the Montgomery County Board of Education; and Walter McKee, Superintendent of Education of Montgomery County, Alabama, defendants,

United States of America, amicus curiae

Civil Action No. 2072–N

Order

The motion of the Montgomery County Board of Education filed herein on February 28, 1968, seeking an order suspending and staying the order and injunction of this Court made and entered in this case on February 24, 1968, is now presented. The submission is upon the motion, the record and the arguments of counsel.

From 1954—when the Supreme Court of the United States put the Montgomery County School Board and other school boards throughout this country on notice that they could not continue under the law to operate a dual school system based on color—until this

Court found it necessary to enter an order on July 31, 1964, requiring commencement of the desegregation of the public schools in Montgomery County, Alabama, the Montgomery County Board of Education had taken no steps and had made no plans whatsoever to comply with the law of this land in the area of school desegregation. Even though ten years had passed when this matter came on for a hearing in 1964, the Montgomery County Board of Education was allowed, by this Court, to proceed with desegregation gradually, for the reason that it was realized that desegregation of the public schools cut across the social fabric of this community and that there would be both administrative and other practical problems for the board to cope with in order to comply with the law. In the first phase of accomplishing desegregation of the public schools—that is, the adoption of a plan, which has been referred to as "paper compliance"—the Board of Education proceeded with the minimum required by the Court, but in a manner that was acceptable. The next stage of the desegregation process—the token desegregation of the schools and faculty—was also accomplished by the Board in an acceptable manner. However, we have reached the point where we must pass "tokenism," and the order that was entered in this case on February 24, 1968, is designed to accomplish this purpose. It was not designed to and was not intended to accomplish, and, if complied with, will not require more than the Supreme Court of the United States and the other appellate courts have held must be accomplished in order to desegregate a public school system.

The Board of Education in its motion to suspend and stay the order of this Court pending appeals—which may take a year or longer—emphasizes certain particular features of this Court's order of February

24, 1968. In some instances the emphasis is misplaced, and certainly that part of the motion which states that the February 24, 1968, order "contains far reaching pronouncements of legal principles heretofore unpredecented in this District and this Circuit" is incorrect—both in law and in fact. The Montgomery board complains about that part of the order requiring assignment and transfer of faculty members, student teachers and substitute teachers according to a fixed ratio based on race. While this Court did state in its order of February 24, 1968, that the "ultimate objective" in faculty desegregation should be, because of the ratio of white to Negro faculty members in the school system, approximately 3 to 2, no schedule was set up to accomplish this "ultimate objective." The United States requested that a definite schedule be outlined for this accomplishment. However, gradualism has been found to work quite successfully in the past in this type case and particularly with the Montgomery County Board of Education, and gradualism is contemplated by this Court in accomplishing this "ultimate objective." What is actually required in the area of faculty desegregation in the high schools for the 1968–69 school year is very little—if any—more than the testimony reflects the school board planned without an additional court order. For instance, the school board presented testimony by Mr. Jack D. Rutland, the school principal for the new Jefferson Davis High School, to the effect that he contemplated hiring approximately 35 teachers, 7 of whom were to be Negroes. Thus, what is now ordered in the way of faculty desegregation as far as the Jefferson Davis High School is concerned is not as much as this Court was led to believe by the board's testimony would be accomplished by the board for the 1968–69 school year without any addi-

tional court order. This also applies to that part of the Court order as now amended requiring faculty desegregation for the other schools in the system. Thus, in the area of faculty desegregation, nothing more is required of the Montgomery County School Board by the order of February 24, 1968, than the law requires as a minimum at this stage of the desegregation process and very little, if any, is required more than the school board, by its testimony, advised this Court it was going to do anyway.

The school board's complaint that the "ratio" requirement is unprecedented is inaccurate. In *Board of Education of Oklahoma City Public Schools* v. *Dowell,* 375 F. 2d 158, 164 (10th Cir. 1967), it was observed that:

> Among the specific recommendations found in the report and *embraced by the trial court's order* were:
>
> * * * * *
>
> (4) Desegregation of all faculty personnel so that by *1970* the faculty ratio of whites to non-whites in each school will be the same as the faculty ratio of whites to non-whites in the entire school system, subject to a reasonable tolerance of approximately 10%. [Emphasis added, footnote omitted.]

The Fifth Circuit has not addressed itself to the means to be employed to fully achieve faculty desegregation. It has approved "racial criteria" in assignments "in fashioning an appropriate remedy to undo past discrimination." *United States* v. *Jefferson County Board of Education,* 372 F. 2d 836, 892 (5th Cir. 1967). The opinion in that case recognized that requiring a percentage ratio of teachers in the system was one method of meeting the problem:

> We anticipate that when district courts and this Court have gained more experience with

> faculty integration, the Court will be able to set forth standards more specifically than they are set forth in the decrees in the instant case. 372 F. 2d at 894.

In meeting this problem of faculty desegregation, other district courts have found it necessary to spell out in specific numbers the degree of faculty desegregation required where the local school boards have not proceeded with "deliberate speed." See *Coppedge* v. *Franklin County Board of Education,* 273 F. Supp. 289 (E.D. N.C. 1967); *Kier* v. *County School Board,* 249 F. Supp. 239 (W.D. Va. 1966).

The school board also complains as to that feature of the order relating to transportation. The order as now amended does not require the school board to do anything in the area of transportation of students that is not already required of practically every school in the State of Alabama and particularly each of the 99 schools subject to the order of the three-judge court in *Lee* v. *Macon County Board of Education,* 267 F. Supp. 458. As a matter of fact, that part of the order of this Court of February 24, 1968, that relates to transportation is almost a duplicate of what is required of other schools throughout the State of Alabama in the area of transportation.

That particular feature of this Court's order of February 24, 1968, requiring transportation to the Jefferson Davis High School only requires transportation on the same basis that the school board is already providing it to Lee and Lanier High Schools. As was emphasized in the opinion and order of February 24, 1968, the Montgomery County School Board, according to the preponderance of the evidence, has set out to continue to operate—other than allowing token desegregation—a dual school system based upon race or color. The evidence clearly reflects that the manner in

which this is to be accomplished is by the construction of schools with a limited capacity in virtually all-white neighborhoods. These capacities are not projected with the community growth in mind. The recent trend by the Montgomery board is to limit the capacity of these new schools to the present student population in these white enclaves. To perfect this plan, the school board has declared—before any choices are filed—that no transporation will be provided to the new Jefferson Davis High School, but that transportation will be provided to every other high school in the county. The announced justification for this is that the school will be filled to capacity without transporting any students. Thus, the board will, because of the location of these new schools (Jefferson Davis, Southlawn Elementary and Peter Crump Elementary), when it refuses to honor the choices of students who do not live in these white neighborhoods, be successful in operating exclusively white schools for white communities. At the same time the board has been doing this, it has been enlarging, through expansion programs, the Negro schools; these expansion programs are based upon the projected student growth. Through this means, the "freedom-of-choice plan" will not accomplish desegregation of the school system in Montgomery County, Alabama. *If this system is permitted,* the Montgomery board will be using the freedom-of-choice plan for part of the school system and the neighborhood school plan for another part of the system. The freedom-of-choice plan will be operating for schools such as Lee High, Lanier High, Capitol Heights, Jr. High, Goodwyn Jr. High and others, and these schools will be desegregated. The Jefferson Davis High, Southlawn Elementary and Peter Crump Elementary Schools will be operated on a segregated basis—solely for the

students residing in these exclusively white neighborhoods. The law will simply not permit the operation of such a system.

Furthermore, the evidence in this case is clear that the Jefferson Davis High School has been constructed in an exclusively white, predominantly high income-tax bracket community. To allow the Board of Education of Montgomery County, Alabama, to succeed in such a plan will not only be to discriminate against the Negro children who might elect to attend Jefferson Davis High School, but will also, according to some theories, discriminate against white children who attend desegregated schools.

This Court has ordered no "busing" of students other than requiring the Board of Education to provide exactly the same type transportation and upon exactly the same basis as that already provided by the board to students attending Lee and Lanier High Schools.

The last aspect of this Court's order that the board by its motion considers innovative to the point that the order should be stayed pending appeal is that pertaining to honoring the choices of Negro students who choose to attend Jefferson Davis High School during the 1968–69 school year. As was emphasized in the February 24, 1968, order, the school board, through its agents and by its own practices, had set about to create and had created the impression throughout the system that the new air-conditioned Jefferson Davis High School was to be an exclusively white school. No reasonable conclusion could be reached other than that this was for the purpose of deterring any Negro student in the system from choosing the Jefferson Davis school for the 1968–69 school year. The impression had been created that the school was not available—even though the Mont-

gomery Board of Education is theoretically operating under a freedom-of-choice plan—for anyone except the 850 students of the exclusively white, high-income group that comprise the community where the new school is located. Fairness and justice requires that something be done to counteract this aggravated type of discrimination. The order emphasizes that this feature is a temporary measure—presently designed only to operate during the 1968–69 school year. The order further emphasizes that the choices of Negro students electing to attend Jefferson Davis High School during the 1968–69 school year shall be honored *in the absence of compelling circumstances to be approved by this Court* on the school board's motion. As to this feature of the order—as it has throughout this litigation—reasonableness will govern the Court's action.

When motions to stay orders and injunctions are filed by litigants in any type of litigation, normal judicial procedure requires—as was done in this case—that the motion to stay be presented to the judge entering the order sought stayed. This invariably places the judge in the position of being required to review and appraise his own order; that is the situation now presented. This Court firmly believes that each and every provision and requirement in the order and injunction made and entered in this case on February 24, 1968, is the minimum the applicable law will allow under the peculiar facts and circumstances presented and that each and every feature of the order and injunction entered in this case on February 24, 1968, is not only authorized but required by the applicable law. However, it is not felt that any of the litigants will be prejudiced if certain features of the order to which the Montgomery County Board of Education most strenuously objects are stayed for a

limited time so as to afford the Board of Education a reasonable time to secure appellate review of these features of the order and injunction.

The feature with regard to transportation *generally* (which is, as has been emphasized, required of practically every other school in the State of Alabama), the features as now amended with regard to the desegregation of the substitute teacher program, the student teacher program and the night school program, will not be stayed. These do not even approach new or novel areas. That part of the order requiring the approval of the State Superintendent of Education prior to letting new contracts or expanding existing schools is not novel and will not be stayed. Those portions regarding reports to this Court are not novel and are not to be stayed. That provision of the injunction as now amended relating to faculty and staff set out in Part I, B, will be stayed for a limited period pending an appeal. That provision of the order set out in Part IV, C, relating to transportation to the Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School, will be stayed for a limited time pending appeal. That provision of the order set out in Part IV, D, relating to the honoring of the choices of Negro students who elect to attend Jefferson Davis High School during the 1968–69 school year, in the absence of compelling circumstances approved by the court on the school board's motion, will be stayed for a limited time pending appeal. The remainder of the order, as stated above, will not be stayed.

There is a provision authorizing accelerated appeals where time is of the essence. This Court considers that time is of the essence as to these features of the injunction now being stayed pending this appeal. There is no reason why the school board,

through its attorneys, cannot secure an accelerated hearing of this matter before a panel of the United States Court of Appeals for the Fifth Circuit. In this connection, both the board's and government's attorneys have orally assured this Court that they will seek to expedite the appeal of this case and will, by reason of the time limitations involved, request the Court of Appeals to accelerate the hearing and submission of the case. This will enable these features of the order to be reviewed by the appellate court prior to the commencement of the 1968–69 school year and will also, in the event one or more of the provisions of the February 24, 1968, order are affirmed, enable the school board to put them into effect for the 1968–69 school year. This procedure will allow appellate review of the order before it is scheduled to be effective and will also keep the Negro plaintiffs from being prejudiced by any further undue delay. In the opinion of this Court, five months will be ample time to afford the school board, through its attorneys, an opportunity to secure an appellate review of these matters. Therefore, a stay order as to these features herein enumerated will be entered and the order of this Court of February 24, 1968, as to these enumerated features will not be effective until August 1, 1968. Unless the school board secures an appellate review prior to that date, this stay now being entered will expire on that date. The Clerk of this Court and the official court reporter for this district stand ready to assist the school board in the preparation of the record in this case so as to facilitate the presentation of the matter to the appellate court.

Accordingly, it is the Order, Judgment and Decree of this Court that the effective date for complying with, and making plans to comply with, those provisions in the injunction made and entered

herein on February 24, 1968, set out in Part I, B (faculty desegragation), Part IV, C (transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School), and Part IV, D (the honoring of choices of Negro students who choose to attend Jefferson Davis High School during the 1968–69 school year) are hereby stayed until August 1, 1968.

Done this the 2nd day of March, 1968.

FRANK M. JOHNSON, Jr.,
United States District Judge.

Appendix C

In the United States District Court for the Middle District of Alabama, Northern Division

ARLAM CARR, ET AL., PLAINTIFFS

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR., FRED BEAR, GEORGE A. DOZIER, DR. J. EDWARD WALKER, ISABELLE B. THOMASSON AND DR. ROBERT PARKER, MEMBERS OF THE MONTGOMERY COUNTY BOARD OF EDUCATION, AND WALTER MCKEE SUPERINTENDENT OF EDUCATION OF MONTGOMERY COUNTY, ALABAMA, DEFENDANTS

UNITED STATES OF AMERICA, AMICUS CURIAE.

Civil Action No. 2072-N

ORDER AMENDING ORDER AND INJUNCTION OF FEBRUARY 24, 1968

Upon consideration of the defendants' motion to stay the order and injunction made and entered herein on February 24, 1968, and the arguments in support thereof and in opposition thereto, it is considered appropriate, in order to accomplish the intent and purpose of this Court and in order to clarify the order and injunction in certain specific respects, to amend the order made and entered February 24, 1968.

Accordingly, it is Ordered that:

(1) That portion of Part IV, C, reading:

> The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee or Lanier High School, in the absence of compelling circumstances approved by the Court on the school board's motion,

is amended to read:

> The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee, Lanier, or Montgomery County High School, in the absence of compelling circumstances approved by the Court on the school board's motion.

(2) That portion of Part I, D, reading:

> Commencing March 1, 1968, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester,

is amended to read:

> Commencing in September, 1968, with the 1968–69 school year, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

(3) That Part I, E, reading:

> Commencing March 1, 1968, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system,

is amended to read:

> Commencing in September, 1968, with the 1968–69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

(4) That portion of "Attachment A" to the injunction wherein it is stated:

> We are sending you this letter to inform you that you are eligible to attend Jefferson Davis High School if you choose to do so,

is amended to read:

> We are sending you this letter to inform you that you are eligible to choose to attend Jefferson Davis High School if you desire to do so.

(5) That portion of Part I, B, reading:

> (1) *1968–69.* At every school with fewer than 12 teachers, the board will have at least two full-time teachers whose race is different from the race of the majority of the faculty and staff members at the school,

is amended to read:

> (1) *1968–69.* At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

Done, this the 2nd day of March, 1968.

FRANK M. JOHNSON, JR.,
United States District Judge.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama

(August 1, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

GEWIN, Circuit Judge: The United States and appellees filed motions in the United States District Court for the Middle District of Alabama on August 17, 1967, and February 7, 1968, requesting the district court to require appellants to take further steps to eliminate the dual school system in Montgomery County, Alabama. Hearings were held on September 5, 1967 and February 9, 1968. The district court entered its order on February 24, 1968, amended March 2, 1968, granting specific relief in the areas of faculty desegregation, student teacher and substitute teacher desegregation, school construction, student transportation, and student choices regarding newly constructed schools. This appeal followed. We affirm the order of the district court as hereinafter modified.

We see no need to recite the history of the school board's efforts to comply with the constitutional mandate to desegregate its public schools. However, we note that progress has been made and that the school board has been complimented on its good faith efforts. We do not wish unduly to emphasize or de-emphasize good faith on the part of this particular board of education, but we do take note of the fact that this is the very first time it has been before this court. This case does not bear the "many service stripes" mentioned in United States v. Board of Educ. of Bessemer, 5 Cir. 1968, ____ F.2d ____ [Nos. 25809, 25810, 25811, June 3, 1968]. *See also* Davis v. Board of School Comm'rs of Mobile, 393 F.2d 690 (5 Cir. 1968).[1] In our view, good

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[1] In *Davis*, the court mentioned the fact that the case involving Mobile schools had been before the Fifth Circuit five times since 1968. 393 F.2d at 691 n.1.

faith conduct on the part of any litigant in any court, especially a court of equity and, more particularly, in the sensitive area of desegregation, is a vital element for appropriate consideration. Our feeling with respect to good faith is buttressed by the recent decision of the Supreme Court in Green v. School Bd. of New Kent, ____ U.S. ____, 20 L.Ed.2d 716 (1968).[2] Some five times, during the period from 1964 to 1967, the district court publicly complimented the Montgomery County School Board on its efforts toward achieving desegregation.[3]

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[2]There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in *light of the circumstances present* and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in *good faith* and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief. Of course, where other, more promising courses of action are open to the board, they may indicate a lack of *good faith;* and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. 20 L.Ed.2d at 724 (emphasis added).

[3]At the conclusion of a hearing on May 25, 1967, the court made the following statement from the bench:

> I would like to say this to you here in the presence of the plaintiffs and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as profes-

It is not necessary to discuss all of the provisions of the district court's order. Appellants challenge that portion of the order which directs them (1) to assign and transfer faculty members, student teachers, and substitute teachers throughout all schools in the system and from one school to another according to a fixed mathematical ratio based on race, and (2) to give affirmative preference to Negro students who choose to attend a newly constructed high school. That part of the court's order challenged on appeal is set forth below:

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sional educators and not as politicians. This present attitude is demonstrated here at this time; this past conduct on the part of these officials has, without any doubt, inured to the benefit of the students regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have accomplished this largely through — or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar operations is a considerable feat, for which this community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate.

Again on September 5, 1967, at the conclusion of a hearing which apparently formed a partial basis for the order now under consideration, the court stated from the bench:

You are dealing here with a school system that you haven't had to take to your appellate courts a single time since you started. It is the only major school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they had been ahead of most of your other systems in every field.

I. FACULTY AND STAFF

A. *Statement of Objective.*

In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

B. *Schedule for Faculty Desegregation.*

1. *1968-69.* At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for

the time being, other specific faculty and staff desegregation requirements for future years.

C. *Means of Accomplishment.*

If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filling vacancies, then it will do so by the assignment and transfer of teachers from one school to another.

D. *Substitute Teachers.*

Commencing in September, 1968, with the 1968-69 school year, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

Commencing with the 1968-69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only at predominantly white schools or only at predominantly Negro schools.

E. *Student Teachers.*

Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substan-

tially the same as the ratio of white and Negro student teachers throughout the system.

F. *Night Schools.*

Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program.

IV. JEFFERSON DAVIS HIGH SCHOOL, PETER CRUMP SCHOOL, AND SOUTH LAWN SCHOOL

D. *Honoring Choices.*

The school board will honor the choices of each Negro student who chooses to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the Court on the school board's motion.

The district court denied appellees' request that the ratio of white to Negro faculty members in new schools be approximately three to two in their first year of operation. Appellees have cross-appealed on this issue.

I

ASSIGNMENT OF TEACHERS

It is clear from the record and briefs that appellants fully recognize that they have the affirmative duty to

desegregate the faculties throughout their entire school system. They have been striving to carry out this duty by seeking and encouraging voluntary transfers of teachers and by requesting new teachers to accept positions in schools where their race is in the minority. Appellants further recognize that they have the legal right to compel faculty assignment if voluntary placement is not effective.[4] However, appellants object to the district court's order requiring assignment of teachers on the ground that such is not in keeping with sound and quality school administration. We quote from appellants' brief:

> In *Beckett v. School Board of City of Norfolk, Virginia*, 269 F. Supp. 118, at page 139 (E.D. Va. May, 1967) the Court stated, in considering faculty desegregation:
>
> > However, in line with the most recent Wheeler case [Wheeler v. Durham City Board of Education, 363 F.2d 738], the School Board has not adopted

[4]Although appellants consistently argue for voluntary assignment of teachers and staff and contend that "sound and quality school administration" favors voluntary assignment, the following statement from appellants' brief shows clearly that they recognize their obligation:

> These appellants fully recognize that they have the affirmative duty to desegregate the faculty throughout this school system to the end that "the pattern of teacher assignment to any particular school shall not be identified as tailored for a heavy concentration of either Negro or white pupils in the schools." (R.p.370 and *U.S. v. Jefferson County Board of Education*, 372 F.2d 836; aff'd en banc, 380 F.2d 385) The appellant recognizes further that they have the legal right to compel faculty assignment if voluntary placement is not effective.

> the tactic of compelling a teacher to transfer. *Moreover, such a practice would not be in accord with sound educational principles.* (Emphasis supplied)

The question of whether a school board is obligated to assign teachers to schools where their race is in the minority when efforts to persuade teachers voluntarily to accept such positions fail, has recently been before this court. United States v. Board of Educ. of Bessemer, *supra*. That opinion answers the above question with an emphatic *yes*. We quote:

> The School Boards do not meet their duty by soliciting volunteers. For the fact remains that the "responsibility for faculty desegregation, just as the responsibility of student desegregation, lies ultimately with the board, not the teachers." Davis v. Board of School Commissioners of Mobile County, 5 Cir. 1968, 393 F.2d 690. So there will be no mistake about it we spell out that *Jefferson* stands for the proposition that there is an affirmative duty on the part of the School Boards to do everything — the word is everything — within their power to meet the decree-imposed complete desegregation of faculties. It is not, it cannot be, left to the voluntariness of teacher applicants or transfers.

We therefore find no error in the court's order requiring the assignment of teachers since efforts to achieve faculty desegregation by voluntary means have failed.

II

FIXED MATHEMATICAL RATIO

Appellants strenuously object to the imposition of the mathematical ratios contained in the district court's order. They contend that such ratios are arbitrary and unwarranted in view of their extensive plans to desegregate their faculties, their showing of good faith, and the overall achievement of progress in the area. In addition, appellants submit that a fixed ratio does not take into consideration the availability of teaching personnel or the complexity of school administration, and that it ignores the goal of quality education and other similar factors which are inevitably involved in the operation of a school system.

After extensive hearings, the court below found that desegregation of faculties in the Montgomery County school system was lagging and that appellants had failed to comply with earlier orders of the court requiring full faculty desegregation. In order to remedy the lack of faculty integration, the court imposed specific targets for the school year 1968-69 and, more specifically, delineated what would be required for satisfactory compliance. Thus, under the district court's order for the school year 1968-69, most schools in Montgomery County must have roughly one-sixth of the faculty and staff of a race different from that of the other five-sixths. The school board will have achieved full compliance when the ratio of white to Negro teachers is three to two in each school. At the outset we note that

the testimony of school officials indicates a need for specific directives in the instant case.[5]

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[5]The following is an excerpt of the testimony of Associate Superintendent W. S. Garrett:

Q. As part of your duties, have you been given the responsibility, primarily, of carrying out faculty desegregation?

A. Well, the superintendent has delegated the recommending of the best faculty members that I can come by, and desegregation is a large — our faculty is a large part of my responsibilities; not the only one, but that has been discussed and — with the Board and with the superintendent, and we have a plan to accomplish this, have been working on it all year.

Q. Well, under your plan, when do you estimate that faculty desegregation will be finally accomplished in terms of the objective of the court order removing —

A. Well, now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of. It says that you will have reasonable desegregation of faculty and that you will strive toward having each faculty not recognizable as being staffed for a particular race. That is what I get out of it.

Q. Well, let —

A. So I — I can't — this court order is in fairly general terms; I can't answer that question.

Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished?

A. Well, that would depend on what the Board's definition of that is, the court's definition of that.

Q. Do you have a definition of that?

A. Not at this point; we have discussed that many times, and I do not have a definition of — of what that would mean.

Q. No one has told you, given you a definition in terms of mechanics, in terms of numbers, none of your superiors?

A. No, as far as I know, no other school personnel man

In United States v. Jefferson County Board of Educ., 372 F.2d 836 (5 Cir. 1966), *aff'd en banc*, 380 F.2d 385 (5 Cir. 1967), *cert. denied*, 389 U.S. 840 (1967), we dealt with faculty desegregation. Following *Jefferson* the question of faculty desegregation has recently been before this court on at least three separate occasions. Stell v. Board of Educ. of Savannah, 387 F.2d 486 (5 Cir. 1967); Davis v. Board of School Comm'rs of Mobile, *supra;* and United States v. Board of Educ. of Bessemer, *supra*. We have continued to emphasize the responsibility of school boards in achieving effective faculty desegregation. We have emphasized the desirability of their doing so because of their expertise in the field of education. Nevertheless, we nave made it clear that it is the duty of district courts to require specific target dates and accomplishments in order to ensure full compliance with all deliberate speed. Moreover, it is clear from recent decisions of the Supreme Court that the type of plan under which school boards should operate is a plan which works. Green v. County Bd. of New Kent, *supra;* Monroe v. Board of Comm'rs of Jackson, ____ U.S. ____, 20 L.Ed. 2d 733 (1968); Raney v. Board of Educ. of Gould, ____ U.S. ____, 20 L.Ed.2d 727 (1968).*

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in America has. I have talked to many of them. What we are striving to do is to make progress and keep going and hope that somewhere along the line we will have achieved the — what the court has in mind. But if you will look at that court order, you will see it doesn't lay down the precise terms exactly what that means; it is a broad definition.

*In both *Green* and *Monroe* faculty integration was an issue before the district courts and the courts of appeals. The Supreme Court made no pronouncement with respect to faculty integration but apparently left that decision to the district courts

Immediately following the *Brown* decisions,[7] emphasis was placed on the desegregation of schools from the point of view of the students. Faculty and staff desegregation are more recent. While it is obvious that we cannot tolerate the delay which has been experienced with respect to the desegregation of students, the decisions, in dealing with faculty and staff, have indicated "the likelihood of some lessons being learned from experimentation."[8] In the case *sub judice*, the district court concluded that Montgomery County had not fully complied with its orders to effectuate desegregation of faculty, that the plan under which the school board had sought to integrate the faculty was

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involved under the remand orders of the Courts of Appeals in the two cases. The following is from the *Green* decision:

> The Court of Appeals for the Fourth Circuit, en banc, 382 F.2d 326, 338, affirmed the District Court's approval of the "freedom-of-choice" provisions of the plan but remanded the case to the District Court for entry of an order regarding faculty "which is much more specific and more comprehensive" and which would incorporate in addition to a "minimal, objective time table" some of the faculty provisions of the decree entered by the Court of Appeals for the Fifth Circuit in United States v. Jefferson County Board of Education, 372 F.2d 836, aff'd en banc, 380 F.2d 385 (1967).

20 L.Ed. at 722.

In *Monroe* the Supreme Court stated:

> The Court of Appeals for the Sixth Circuit affirmed except on an issue of faculty desegregation, as to which the case was remanded for further proceedings.

20 L.Ed.2d at 738.

In *Raney* the Court stated: "Faculties and staff were and are segregated." 20 L.Ed.2d at 730. Faculty segregation or integration is not mentioned further in the opinion.

[7] Brown v. Board of Educ. of Topeka, 347 U.S. 483 (1954), and Brown v. Board of Educ. of Topeka, 349 U.S. 294 (1955).

[8] *See* United States v. Board of Educ. of Bessemer, *supra*; United States v. Jefferson County Bd. of Educ., *supra* at 894.

not adequate, and, therefore, that another more specific plan was necessary.

It is our conclusion that the standards fixed by courts with respect to faculty desegregation cannot be totally inflexible. In none of the three recent cases cited above, *Stell*, *Davis*, and *Bessemer*, has this court required faculty integration according to a numerical or racial percentage ratio. On the contrary, we have declined "to enhance Jefferson's demands."[9] We do not intimate that there must always be a slavish and unswerving adherence to the precise requirements of *Jefferson*, but generally we have avidly embraced the idea of circuit-wide uniformity and have declined "to tinker with the model decree."[10] As a matter of fact, after the decision of the district court in this case, we have actually rejected the idea of requiring mathematical or racial percentage ratios in dealing with faculty and staff. We quote from the *Bessemer* decision:

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[9] *See* United States v. Board of Educ. of Bessemer, *supra*.

[10] As we pointed out in United States v. Board of Educ. of Bessemer, *supra*:

> We must steel ourselves against the importunities to import inequality by judicial modifications to meet some supposed need of a locality. One immediate consequence of such a practice would be to encourage others to try their hand. And soon we'd be back in the school business again — a role for which we are not equipped or competent to handle. The efforts to reduce the demands of *Jefferson* we've resisted so far. *See, e.g., Barnhardt v. Meridian Municipal Separate School Dist.*, 5 Cir. 1968, ——— F.2d ——— [No. 25083, April 24, 1968]; *Gaines v. Dougherty County Board of Education*, 5 Cir. 1968, ——— F.2d ——— [No. 25776, March 14, 1968]; *Stell v. Board of Public Education for the City of Savannah*, 5 Cir. 1967, 387 F.2d 486 [No. 23724, December 4, 1967].

> We are requested to do both too much and too little. The school boards with a sincerity of counsel we do not question, urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges adds to and extends *Jefferson*. We think neither alternative is wise.

We stated further:

> Even though *Jefferson* was more equivocal on faculty integration and expressed the likelihood of some lessons to be learned from experimentation, we think we should apply an even hand to deny requests to enhance *Jefferson's* demands.

The decree under review states that schools with twelve or more faculty members must begin the school year 1968-69 with at least one of every six faculty and staff members being of a different race from the majority. Because of the difficulties inherent in achieving a precise five-to-one ratio, this part of the district court's order should be interpreted to mean *substantially* or *approximately* five to one. The decree is modified to this extent in order to allow a degree of flexibility in the application of the 1968-69 interim requirements.

Additionally, whether the school board is in full compliance should not be decided solely by whether it has achieved the requisite numerical ratios.[11] The assignment of faculty and other staff to particular schools need not mirror the total faculty of the entire system as related to race or color. There must be a good faith and effective beginning and a good faith and effective effort to achieve faculty and staff desegregation for the entire system. Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective.[12] Consideration must be given to the avail-

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[11]Various district courts have entered orders that contain specific standards and at least one appellate court has approved such an order. Coppedge v. Franklin County Bd. of Educ., 273 F. Supp. 289 (E.D.N.C. 1967); Kier v. County School Bd. of Augusta, 249 F. Supp. 239 (W.D.Va. 1966); Board of Educ. of Oklahoma City v. Dowell, 375 F.2d 158 (10 Cir. 1967). Also, though the Eighth Circuit refrained from imposing an exact formula in Kelley v. Altheimer, 378 F.2d. 483 (1967), it specifically called the district court's attention to percentage formulas set by other district courts.

[12]After the decision in Kelley v. Altheimer, *supra* note 11, the Eighth Circuit decided the case of Yarbrough v. Hulbert-West Memphis School Dist., 380 F.2d 962 (8 Cir. 1967). In *Yarbrough* that circuit rejected the idea of a mathematical formula and a fixed timetable and placed this interpretation upon its prior decision in *Altheimer:*

> We say in passing that this panel does not regard *Altheimer* as imposing any rigid mathematical formula which, in certain situations, could itself be arbitrary and without educational significance. We regard that case as one requiring a reluctant school board to get on with its task of achieving faculty and staff desegregation and assignment to comport with equitable and constitutional requirements divorced from racial con-

ability of teaching personnel, sound school administrative procedure, and other important factors. Consequently, under the facts and in the circumstances of this case, the order will be modified accordingly and the numerical ratios set forth in the district court's order and decree will be eliminated. This modification does not affect the five-to-one interim ratio for the school year 1968-69 as hereinabove modified.

Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. Any conduct by any school board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated. It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. School boards must not use excuses to delay the achievement of full faculty and staff desegregation. They have the responsibility and should exercise the ingenuity to achieve a proper racial balance. We have repeatedly asserted that school boards are better equipped to achieve these aims than are the courts; but, if they

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siderations. Numbers and percentages per se are not the ultimate answer but, up to a point, they touch upon realities. This, we think, is the significance of *Altheimer*.

fail or refuse to act, they should now fully realize that the courts will require action.

III

JEFFERSON DAVIS HIGH SCHOOL

From the evidence presented the district court found that the newly constructed Jefferson Davis High School, scheduled to commence operations by the 1968 school year, further perpetuated the dual-school system. More specifically, the court found that the location of the school in a substantially all-white neighborhood, the enrollment capacity of the school, the publicity surrounding the recruitment of white personnel, and the scheduling of athletic events established the new high school, from its very inception, as a "white" school. Indeed, the court found that the conduct of the school board relating to the new high school was "most aggravating." In order to combat the actions of school authorities and to eradicate the impression that the new air-conditioned Jefferson Davis High School was to be an exclusively white school, the district court decreed that the school board will honor the choice of each Negro student who chooses to attend Jefferson High during the 1968-69 school year.

Appellants contend that requiring affirmative racial preference to be given to Negro students for attendance in the Jefferson Davis High School is unwarranted. They submit that the school board did not plan the new high school exclusively for white children. They state in their brief that the school board's current plans call for the employment of seven Negro

teachers in the school. Further, they point to the fact that the school will open on a "freedom of choice" basis. To date 150 Negro students have chosen to attend the high school which has a capacity of 967 students. Appellants state to the court in their brief that these Negro choices will be honored in accordance with the provisions of the school board's plan.

We have examined the record and conclude that the findings of the district court that various actions on the part of appellants created the impression that the Jefferson Davis High School was intended to serve a predominately white student body is supported by some evidence. We conclude that the district court's decree was designed to overcome the impact of the school board's discriminatory conduct as found to exist by the court. The decree requires the school board to honor the choice of each Negro student "in the absence of compelling circumstances approved by the court on the School Board's motion." We cannot be certain as to the court's intended meaning of the term "compelling circumstances." We interpret the term to embrace those reasons which are inherent in and are supported by proper standards of sound school administrative procedure, giving due consideration to all factors and circumstances which are proper to be considered in passing upon such choices.

IV

FACULTY RATIOS IN NEWLY CONSTRUCTED SCHOOLS

Appellees contend that the district court committed

error in not requiring immediate compliance with the three-to-two ratio in schools which will commence operation in 1968. They submit that there would be fewer administrative problems if complete faculty desegregation were achieved at the inception of a new school. However, in the court's order of March 2, 1968, it spoke approvingly of permitting the school board to achieve the ultimate objective of a completely desegregated school system *gradually*. The court stated that gradualism had been found to work quite successfully in the past and that gradualism was contemplated by the court in accomplishing the ultimate objective. We cannot say that the court's decision to refrain from requiring full faculty integration in new schools is erroneous.

The order of the district court is affirmed as herein modified. The Clerk is directed to issue the mandate forthwith.

AFFIRMED AS MODIFIED.

THORNBERRY, Circuit Judge, concurs except as to the modifications of numerical ratios and reserves the right to dissent as to such modifications at a later date.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama

(October 21, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

THORNBERRY, Circuit Judge, dissenting:

The imposition of a specific ratio for each school as the ultimate objective of faculty integration is a new step for this Circuit, but it represents the considered judgment of a district judge who was familiar with the Montgomery schools, had heard testimony, and was making an honest effort to advance the conversion to a unitary racially nondiscriminatory system as required by the Constitution. Having found the objections to this part of the decree rather unpersuasive,[1] I would affirm the district court. To the extent that the majority have entered modifications, I respectfully and in all deference dissent.

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[1]The school board acknowledges that it must desegregate faculty so that no school is identifiable as being tailored for a heavy concentration of Negro or white students, but says that specific ratios are not required by the cases and would be achieved at the cost of quality education. Also, it is predicted that there will be a general exodus of teachers to other parts of the state. The latter point seems to assume that which is not the case, namely, that school boards in other parts of the state are not obligated to integrate the faculty of each school. As I try to show by this dissent, nothing in the cases precludes numerical ratios. Indeed, the cases require district courts to devise specific provisions to implement the general requirements of *Jefferson*. The final argument that quality education will be sacrificed seems to be based more on speculation than evidence. I would point out that the district court's order requires by way of a final objective that the ratio of white to Negro teachers in each school be "substantially the same as it is throughout the system." Once the job has been largely accomplished, i.e., once the three-to-two ratio has been approached in each school, I think the language of the decree leaves room for flexibility based on administrative necessity.

In *Jefferson County*, this Court stated the importance of faculty integration as forcefully as our language permits:

> Yet until school authorities recognize and carry out their affirmative duty to integrate faculties as well as facilities, there is not the slightest possibility of their ever establishing an operative nondiscriminatory school system.

372 F.2d at 892. The general obligations of local boards were articulated, but the formulation of more specific provisions, *i.e.*, provisions that would ultimately get the job done, was left to the boards and district courts:

> It is essential that school officials (1) cease practicing racial discrimination in the hiring and assignment of new faculty members and (2) take affirmative programmatic steps to correct existing effects of past racial assignment. *If these two requirements are prescribed, the district court should be able to add specifics to meet the particular situation the case presents.* (Emphasis added)

372 F.2d at 893. In this case, the district judge saw in the record a lack of progress in the crucial area of faculty integration[2] and a need for specific directions. His solution was to set a three-to-two ratio as the ultimate objective for each school, and I see no basis in the record or the cases for modifying his determination. To be sure, he was experimenting, but I believe

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[2]The latest figures indicate that 39 of 1,365 teachers in the system are teaching in schools of the opposite race.

this to be experimentation within the spirit of *Jefferson County*.

I do not regard *United States v. Board of Education of Bessemer* as good authority for eliminating the numerical ratios. While language in that opinion suggests the Court was not disposed to deviate in either direction from the *Jefferson* decree, it must be remembered that the district judge had not directed the board to go beyond the stage of allowing voluntary transfers of teachers willing to teach in schools of the opposite race. Being unfamiliar with the school system and having before it a record over a year old, the appellate court could do no more than impose the *Jefferson* decree with emphasis on the point that the school board must reassign teachers if the desired results are not achieved through voluntary transfers. Unlike a district judge who has detailed first-hand knowledge of schools and school officials in his area, our Court simply is not equipped at this time to determine specific objectives. Where a district Judge has formulated specific provisions on the basis of a record, it is contrary to our decisions to eliminate them in favor of more general provisions. As stated by this Court in a civil rights case of another kind, a district court "has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Pullum v. Greene*, 5th Cir. 1968, ____ F.2d ____ [No. 25389, June 18, 1968], quoting from *Louisiana v. United States*, 380 U.S. 145 at 154, 85 S.Ct. 817 at 822.

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Appellants,

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ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama.

ON PETITIONS FOR REHEARING EN BANC

(November 1, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

PER CURIAM: The Petitions for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petitions for Rehearing En Banc are also DENIED.

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, CLAYTON* and MORGAN, Circuit Judges.

BROWN, Chief Judge, with whom WISDOM, THORNBERRY, GOLDBERG, and SIMPSON, Circuit Judges join, dissenting:

I dissent from the denial of the rehearing en banc.

In pursuing the ideal of Circuit-wide uniformity which is enhanced by tinkering as little as possible "with the model decree" of *Jefferson I* and *II*[1] as was

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*Judge Clayton did not participate in the vote on rehearing en banc due to illness.

[1]United States v. Jefferson County Board of Educ., 5 Cir., 1966, 372 F.2d 836 (Jefferson I) *aff'd en banc*, 5 Cir., 1967, 380 F.2d 385 (Jefferson II), *cert. denied sub nom.*, Caddo Parish School Bd. v. United States, 1967, 389 U.S. 840, ——— S.Ct. ———, ——— L.Ed.2d ———.

so recently reiterated in *Bessemer*,[2] the panel decision mistakenly concludes that *Bessemer* holds that *Jefferson* and the model decree forbid the District Judge from fixing numerical-percentage ratios of teacher integration. The mistake is unfortunate because in the name of uniformity it begets disparity, not just Circuit-wide, but within the single state of Alabama.

Certainly *Jefferson* lays no such restraint on the District Judges who are on the firing line — just the opposite was declared. "We anticipate that when district courts and this Court have gained more experience with faculty integration, the Court will be able to set forth standards more specifically than they are set forth in the decrees in the instant cases. * * * [T]he district court should be able to add specifics to meet the particular situation the case presents." Jefferson I, 372 F.2d at 893-94.

Any such prohibition would be out of character with the dominant theme so simply expressed and which has now both weathered the storm of certiorari and enjoys the judicial compliment of acceptance. For we there declared, "The only school desegregation plan that meets constitutional standards is one that works." Jefferson I, 372 F.2d at 847.[3]

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[2] United States v. Board of Educ. of Bessemer, 5 Cir., 1968, ——— F.2d ———, [No. 25809, June 3, 1968].

[3] Different only in phrasing was this statement:

> "As the Constitution dictates, the proof of the pudding is in the eating: the proof of a school board's compliance with constitutional standards is the result—the performance. Has the operation of the promised plan actually eliminated segregated and token-desegregated schools and achieved substantial integration?" 372 F.2d at 894.

And in May 1968 — two months before *Carr* — that is exactly what the Supreme Court said in *Green*:[4] "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*." ____ U.S. at ____, 88 S.Ct. at ____, 20 L.Ed.2d at 724.

Unfortunately, if not tragically, the panel's decision recognizes that the School Board's indefinite plan *will not work*. "At the outset we note that the testimony of school officials indicates a need for specific directives in the instant case."[5] As corroboration of this candid confession the Court then footnotes (n. 5) extensive testimony of a responsible member of the school board. Superintendent Garrett explicitly states that he does not even know what the objectives of the earlier District Court order are, when faculty desegregation will be complete, and that he and the Board have been unable to arrive at a workable definition of the model decree's standard of a "faculty not recognizable as being staffed for a particular race."

Specifics are needed. Specifics are needed by the school administrators. Specifics are needed by the Negroes who have waited these 14 years for "a bona fide unitary system where schools are not white schools or Negro schools — just schools"[6] — and who must now wait for an undefined time for the tell-tale mark

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[4]Green v. County School Bd. of New Kent County, Va., May 27, 1968, ____ U.S. ____, 88 S.Ct. 1689, 20 L.Ed.2d 727.

[5]Montgomery Bd. of Educ. v. Carr, 5 Cir., 1968, ____F.2d____, ____ [No. 25865, August 1, 1968, slip opinion at 10-11].

[6]Jefferson I, *supra*, 372 F.2d at 890.

of segregated faculties to pass away. Specifics are needed by children, Negro and white alike, who are entitled to witness, feel, and participate in the continuing lesson of a constitutional order that is color free.

Specifics — imperatively needed — are not forbidden by *Bessemer*.

The language the Court there used[7] was geared very carefully to that case. The decree proposed by the Government had never been submitted to the District Judge. It was a decree for us as a Court of Appeals to enter as a binding mandate on the District Judge. Worse, it was a decree constructed on assumed racial statistics and ratios for application over a period of three years in no way covered or substantiated by a record which was then over a year old and stale, if not silent, on what had been happening.

But it is a mistake to think that this was an acquiescence in the Board's suggestion that it all be left as it had been in the past — and now seems to be left for Montgomery — to the good faith efforts of the school board.

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[7] "We are requested to do both too much and too little. The school boards * * * urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges, adds to and extends *Jefferson*." Bessemer, *supra*, ——F.2d at —— [No. 25809, June 3, 1968, slip opinion at 11].

But we did do four things. The first was to rule out the voluntary approach. The second was to fix an immediate target date, for the School Board to report specifically what it had done and would do for the school year 1968-69. The third was to fix the date — implicit in *Jefferson* — for full compliance, as the beginning of the school year 1970-71. Fourth, we declared that since Negroes were not to be required to wait until "C-day" — 1970-71, to see the evidence of compliance, we sounded in the plainest of words that *specifics* were now the order of the day. Specifics in June-August for the school year 1968-69. More so, specifics for the succeeding year 1969-70, leading to the climax of September 1970.[8]

Loath as Judges are to articulate constitutional goals or actions in the oft-disparaged mechanical terms of arithmetic, this is an area where it is not the spirit, but the bodies which count. Any less inevitably leaves performance to good faith. Good faith is, of course, needed. But good faith is not, and cannot be, the standard. Now, and each term, each school year it comes down to figures. The result is in figures. If the result is satisfactory it is because of numbers, not

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[8] "This leaves the problem of the ultimate 'C Day.' We think it entirely consistent with *Jefferson* to say that full compliance should be reached by the opening of the school year 1970-71. But since that is just two school years away and neither the Court nor the Negro plaintiffs should have to run the risk of an announced failure on the eve of school opening in 1970-71 it is perfectly evident that the District Judge in the forthcoming June-August proceedings must exact or impose specific targets. That will be repeated, only more so, as time marches on into 1969, then into 1969-1970." Bessemer, *supra*, ——F.2d at —— [No. 25809, June 3, 1968, slip opinion at 16].

the effort or subjective motivation. If the result is unsatisfactory it is likewise because of numbers. The numbers — i.e. the numerical percentage ratios — need to be fixed. Once fixed, the Court can always determine whether a good faith effort of compliance has been made. But good faith there is relevant to compliance, not as an element in fixing the standard.

The statistics in this record are abundant and graphic. Without passing judgment on motives or performance the figures of February 1968 either undisputed or found by the Court show that integration of the student body under the freedom of choice plan has been slight.[9] Faculty integration reveals a similar lack of numerical progress much of which, the District Judge expressly finds, is a result for which the Board must bear the full responsibility.[10]

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[9]The District Court found that of 25,000 white children and 15,000 Negro children, there were approximately 550 Negro children attending traditionally white schools. No white children were attending traditionally Negro schools. These facts, as to which there is no substantial contradiction, as well as the facts and quotations in n.10 are from the Memorandum Opinion of the United States District Court for the Middle District of Alabama, filed February 24, 1968.

[10]The teacher force comprised approximately 550 Negro teachers and 815 white teachers. Only 32 classroom teachers in the system were teaching pupils in schools that were predominantly of the opposite race. "Practically all the faculty desegregation in the system has occurred in the high schools. While there is some faculty desegregation in the elementary schools in the system, it is extremely small. There has been very little, if any, faculty desegregation in the schools located outside the City on Montgomery." Of the 26 white teachers hired since September 1967, only 6 or 7 have been placed in predominantly Negro schools. All six Negro teachers hired since that date were assigned to predominantly Negro schools. "The evidence further reflects that the defendants have failed to take any appropriate

After extensive hearings, the District Court, dissatisfied with this lack of demonstrable accomplishment, imposed specific targets for the school year 1968-69 and more specifically, delineated what would be required for satisfactory compliance in order to achieve full faculty integration. The system-wide ratio of white to Negro faculty members is approximately 3 to 2. To attain schools unidentifiable as to race the Judge laid down the standard of a system-wide faculty ratio of 3 to 2. For the school year 1968-69 the Court set an interim compliance ratio of 5 to 1. In addition, the District Court imposed for the 1968-69 school year, the system-wide 3 to 2 faculty ratio for use in assigning substitute teachers, student teachers, and night school faculty members (using the night school faculty ratio).

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steps to insure that substitute teachers are placed on a nonracial basis. No Negro has yet been a substitute teacher in a traditionally white school in Montgomery County." During the 1967-68 school year, white substitute teachers were employed over 2,000 times—only 33 of them in traditionally Negro schools. "Defendants have adopted no adequate program for the assignment of student teachers on a desegregated basis. None of the approximately 150 students teachers used in the Montgomery County School System in the fall of 1967 were assigned to schools predominantly of the opposite race. Four Negro student teachers have very recently been assigned to predominantly white schools. There has been no faculty desegregation in the night schools, operated by the Montgomery County School System." Moreover, on findings, not here challenged, the record failed to show any excuse for this lack of tangible accomplishment. "The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968-69." See n. 9 *supra*.

But much of this was, I fear, undone by the panel. Recognizing in so many words the necessity for "specific directives in the instant case" the Court's opinion does not afford that guidance and, worse, makes drastic alterations in the Trial Judge's record-based, carefully constructed program. Although the change in the formulation of the 1968-69 ratio of 5 to 1[11] may be slight in operative effect it does not stand alone. Completely eliminated is the 1968-69 ratio of 3 to 2 for substitute, student, and night school teachers. More significant is the complete elimination of the 3 to 2 ratio as the *Jefferson* goal of a school "unidentifiable as to race." Indeed, it is rejected for all time under the vague notions[12] which permit subjective discrimination of the kind so characteristic of the regional glacial movement toward integration. Right along with this is the failure, either on original disposition or now in response to an express request n the motion for rehearing, that full compliance be required by the opening of the school year 1970-71 as fixed by "C day" in *Bessemer*.

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[11] "Because of the difficulties inherent in achieving a precise five-to-one ratio, this part of the district court's order should be interpreted to mean *substantially* or *approximately* five to one. The decree is modified to this extent in order to allow a degree of flexibility in the application of the 1968-69 interim requirements." Carr, *supra*, ——F.2d at —— [No. 25865, August 1, 1968, slip opinion at 15).

[12] "Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective. Consideration must be given to the availability of teaching personnel, sound school administrative procedure, and other important factors." Carr, *supra*, ——F.2d at —— [No. 25865, August 8, 1968, slip opinion at 16-17].

Within scarcely 90 miles that separates the Birmingham area from Montgomery there are two separate standards and, perhaps, two separate hopes.

We owe both to those to be commanded by, and those who enjoy the benefit of, court direction, an obligation to speak with a single voice. Whatever might be the ultimate views on the merits, law and all suffer when the Court, from "an inability to muster a majority,"[13] cannot make up its institutional mind.

DYER, Circuit Judge:

I join in dissenting to the denial of a rehearing en banc.

[13]Carter v. United States, 5 Cir., 1963, 325 F.2d 697, 707 (en banc) (dissenting opinion), *cert. denied*, 1964, 377 U.S. 946, ——S.Ct. ——, 12 L.Ed. 2d 308.

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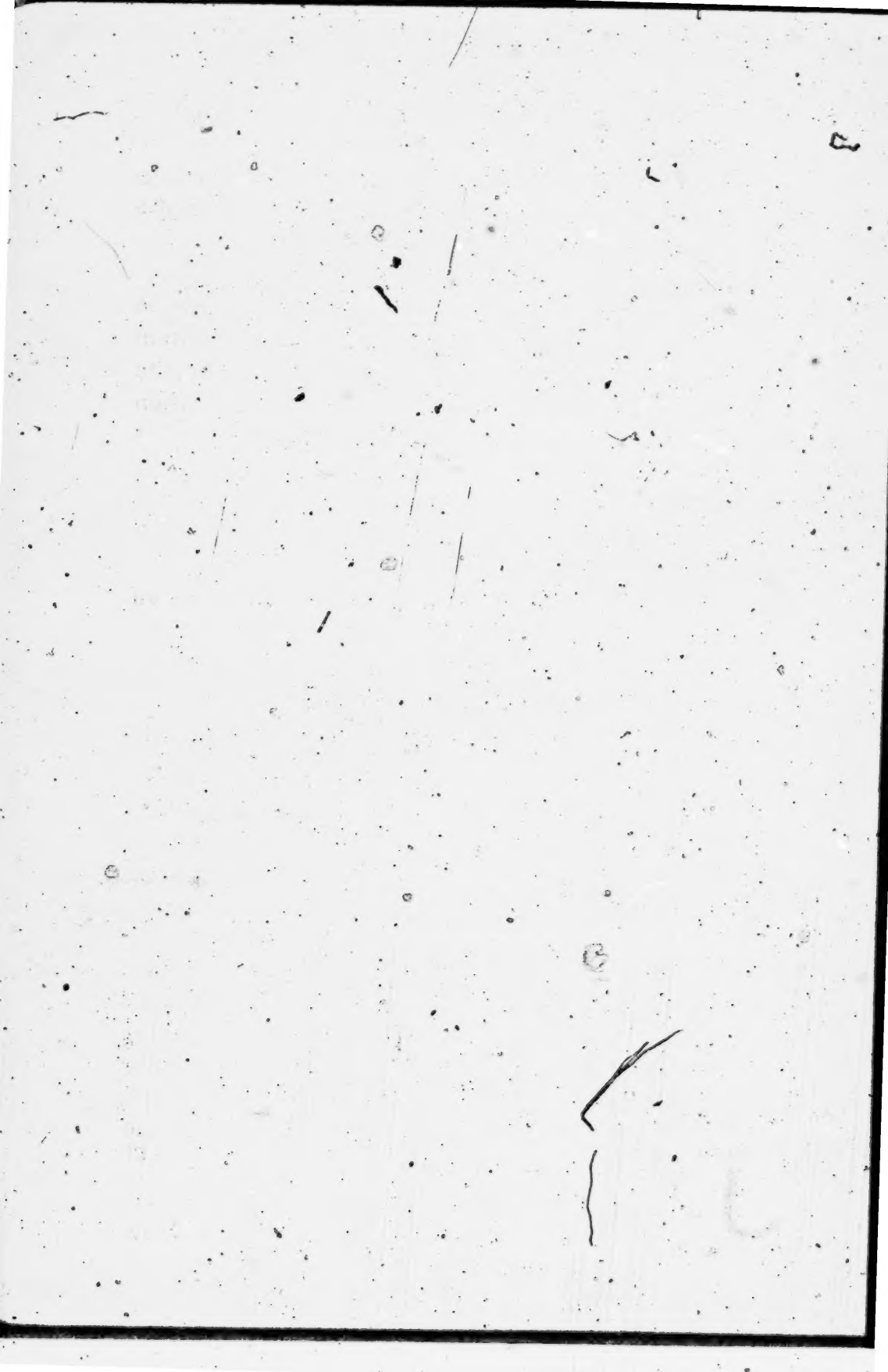

SUPREME COURT, U. S.

JAN 30 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 997

ARLAM CARR, JR., a Minor, by Arlam Carr and Johnnie Carr, his parents and next friends, et al.,

Petitioners,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1968

No. .....

ARLAM CARR, JR., a Minor, by Arlam Carr and Johnnie Carr, his parents and next friends, et al.,

Petitioners,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on August 1, 1968, and rehearing denied on November 1, 1968.[1]

Opinions Below

The opinion and order of the district court of February 24, 1968 (R. 404), is reported at 289 F. Supp. 647 (Appendix A)[2] and the supplemental order entered March 2, 1968 (R. 430), is at 289 F. Supp. 657 (Appendix B). Another

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[1] A petition for certiorari to review the same judgment has been filed by the United States in this Court with the record herein *sub nom. United States* v. *Montgomery County Board of Education*, No. 798, Oct. Term, 1968.

[2] Citations to the Appendix refer to the Appendices to the Petition filed in this Court by the United States in No. 798, Oct. Term, 1968.

supplemental order of March 2, 1968 (R. 428), is unreported (Appendix C). The majority opinion of August 1, 1968, by the panel of the Court of Appeals (by Circuit Judge Gewin, with District Judge Elliott concurring) is reported at 400 F.2d 1 (Appendix D). The dissenting opinion of October 21, 1968, by Judge Thornberry is reported at 402 F.2d 782 (Appendix E). The order of the Court of Appeals of November 1, 1968, denying rehearing and rehearing *en banc* by an equally divided court, is at 402 F.2d 784 (Appendix F). The opinion dissenting from the denial of rehearing *en banc* (by Chief Judge Brown, with the concurrence of Judges Wisdom, Thornberry, Goldberg and Simpson) is at 402 F.2d 784 (Appendix F). Judge Dyer also dissented from the denial of rehearing *en banc* without opinion at 402 F.2d 787.

Prior reported opinions and orders of the district court at earlier stages of the case are reported as follows: (a) July 31, 1964, 232 F. Supp. 705, R. 98; (b) May 18, 1965, 10 Race Rel. L. Rep. 582, R. 191; (c) March 22, 1966, 253 F. Supp. 306, R. 274; (d) August 18, 1966, 11 Race Rel. L. Rep. 1716, R. 285; (e) June 1, 1967, 12 Race Rel. L. Rep. 1200, R. 364.

Jurisdiction

The judgment of the Court of Appeals was entered on August 1, 1968 (Appendix D); rehearing was denied November 1, 1968 (Appendix F). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Question Presented

Whether in a school district segregated by law into a dual system of separate white and Negro schools, where only slight desegregation has been achieved despite litigation begun in 1964, and a trial court determined that to "pass tokenism" the faculty desegregation goal should be to distribute teachers so that all schools will have about the same proportion of white and Negro teachers, it was error for the Court of Appeals to:

(a) strike down the trial court's numerical ratios as the proper long-term faculty integration objective and leave the goal undefined;

(b) refuse to set a target date or timetable for full faculty desegregation;

(c) dilute the trial judge's interim minimum goals by adding qualifying phrases which enable the school board to excuse noncompliance;

(d) reject the petitioners' request that all faculties in new schools be fully desegregated when they are opened.

Constitutional Provisions Involved

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Statement

1. Introduction.

This is a public school desegregation suit presenting issues relating to the obligation of the Montgomery County, Alabama, public school system to desegregate school faculties. The school board appealed seeking reversal of a desegregation order entered February 24, 1968, and amended March 2, 1968, by District Judge Frank M. Johnson, Jr. By a vote of 2-1, a panel of the Court of Appeals (Circuit Judge Gewin and District Judge Elliott) modified the order and eliminated certain provisions relating to faculty desegregation. Circuit Judge Thornberry dissented from the modifications of the faculty integration order. A petition for rehearing *en banc* was denied by an equally divided vote of 6-6, with one Judge not participating due to illness.

In this petition, the Negro pupils and parents who commenced the litigation in 1964 seek to reinstate the district court order on the faculty question. Another petition for certiorari seeking that same relief has been filed by the United States which has participated in the case throughout by order of the District Court. See *United States* v. *Montgomery County Board of Education,* docketed December 4, 1968, as No. 798, October Term, 1968.

2. Proceedings During 1964.

The complaint (R. 1-8), filed by a group of Negro pupils and parents May 11, 1964, alleged that the Montgomery County, Alabama school system was operated on a racially segregated basis. It was alleged that Negro students were assigned to schools with only Negro students and faculties (R. 4). The relief sought included an injunction against segregated faculty assignments (R. 7).

An opinion by the district court July 31, 1964, noted that the system, which embraces the City of Montgomery and surrounding rural areas, served about 25,000 white children and 15,000 Negro children (R. 100). The judge found there was "a dual school system based upon race and color" and that defendants "operate one set of schools to be attended exclusively by Negro students and one set of schools to be attended exclusively by white students" (R. 100). The judge wrote that: "The evidence further reflects that the teachers are assigned according to race; Negro teachers are assigned only to schools attended by Negro students and white teachers are assigned only to schools attended by white students" (R. 100). The court observed: "Even the substitute teacher list and attendance records reflect these distinctions based upon race" (R. 101). Finding that ten years had elapsed since *Brown* v. *Board of Education*, 347 U.S. 483, without any action to desegregate the schools, the court ordered that desegregation begin in September 1964 in grades 1, 10, 11 and 12. But, the court made no order with respect to faculty integration. Thereafter, 29 Negro pupils sought transfers to white schools in September 1964. The school board, using the Alabama School Placement Law, denied the requests of 21 and admitted the remaining 8 Negroes to white schools (R. 112). The court refused to order the admission of the rejected Negro transfer applicants (R. 148).

3. Proceedings During 1965.

On January 15, 1965, the school board filed a proposed desegregation plan as required by the judge (R. 155). The proposed plan made no mention of faculty desegregation and plaintiffs objected on that ground among others (R. 169). On May 18, 1965, the trial judge approved the proposed plan with amendments to require desegregation

in grades 1, 2, 9, 10, 11 and 12 in September 1965 (R. 191). Again the court entered no order with respect to faculty desegregation, but did order that a plan for "complete elimination of the biracial school system within a reasonable time" be filed in January 1966.[3]

In August 1965 the school board reported that it had accepted 18 of 49 Negro applicants to white schools (R. 195). The plaintiffs again objected to the denial of transfer requests, but the court upheld the board's denials of all except 6 applicants who were ordered admitted (R. 232-234).

4. Proceedings During 1966.

On January 14, 1966, the board filed another desegregation plan making no mention of faculty desegregation (R. 250). Again plaintiffs objected to the lack of faculty desegregation (R. 265) and this time the United States made a similar objection (R. 261). Plaintiffs specifically relied on this Court's faculty desegregation decisions in *Bradley* v. *School Board,* 382 U.S. 103 (Nov. 1965) and *Rogers* v. *Paul,* 382 U.S. 198 (Dec. 1965).

On March 22, 1966, the court entered another desegregation order (R. 274), this time requiring a "freedom of choice" plan generally following guidelines of the Department of Health, Education, and Welfare (HEW) (R. 270). This order required desegregation of all grades except 5

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[3] In announcing his ruling from the Bench, May 5, 1965, Judge Johnson said: "The defendants should be ordered to file their plan for completion of the desegregated system, including abolition of the dual school or biracial school system, which of course still exists. I am not naive enough to believe that desegregation of certain grades by transfer, such as we are doing here, is full compliance with what the law eventually envisions and requires, but I recognize that it is a transition period, and I think that this is reasonable for the facts in this case and the circumstances existing in this particular school district at this time" (R. 444).

and 6 in September 1966, and for those grades to be desegregated in September 1967. It directed the closing of several small, inadequate all-Negro schools.

For the first time, the March 22, 1966, order also required faculty desegregation. It ruled that race and color was not to be a factor in faculty assignments except to eliminate the effects of past discrimination. It ordered that assignments be made so that each school's "faculty . . . is not composed of members of one race." Job applicants were ordered to be informed of the new policy, and the administration was ordered to encourage staff transfers to promote integration. The school administration, in response, made tentative arrangements to place 4 white teachers in black schools and 4 black teachers in white schools (R. 455). However, after these plans were made, the trial judge, on his own motion on August 18, 1966, rescinded the requirement and postponed faculty integration another year (R. 285). The judge relied on a Fifth Circuit opinion which ordered faculty integration for Mobile, Alabama to begin in 1967.[4]

5. Proceedings During 1967.

On April 11, 1967, plaintiffs moved for modification of the desegregation plan to conform to the circuit-wide requirements of *United States* v. *Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), *aff'd en banc*, 380 F.2d 385 (5th Cir. 1967), *cert. denied*, 389 U.S. 840 (1967). Judge Johnson ordered the board to show cause why it should not adopt a plan to conform to *Jefferson, supra*, and to the plan ordered by a three-judge court for 99 Alabama counties in *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458

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[4] *Davis* v. *Board of School Commissioners of Mobile*, 364 F.2d 896 (5th Cir., 1966).

(M.D. Ala. 1967), *aff'd sub nom. Wallace* v. *United States*, 389 U.S. 215 (1967).[5]

On June 1, 1967, the court entered an order conformable to *Jefferson, supra*, and *Lee, supra* (R. 364). The provision for faculty desegregation, which is quoted in full in the footnote below,[6] adopted the objective that "the pattern of

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[5] The *Lee* opinion recites in detail the background of official resistance by the Governor of Alabama and state education officials to prevent public school desegregation in the State. The three-judge court found that the desegregation efforts of Negroes in Alabama "have met the relentless opposition of these defendant state officials" (267 F. Supp. at 465; R. 318). The opinion recites in detail one series of episodes in August 1966 when the State Superintendent of Education and Governor George C. Wallace worked to prevent faculty desegregation in Tuscaloosa County (267 F. Supp. at 469). The court found that these "state officials also made it clear that similar measures would be taken in other communities if Negro teachers were assigned to teach white students" (*id.*).

[6] "VI

"FACULTY AND STAFF

"A. *Faculty Employment and Assignment.* Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion or dismissal of teachers and other professional staff members, including student teachers, except that race will be taken into account for the purpose of counteracting or correcting the effect of the past segregated assignment of teachers in the dual system. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take positive and affirmative steps to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year, notwithstanding that teacher contracts for the 1967-68 or 1968-69 school year have already been signed and approved. The objective of the school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will be, insofar as administratively

teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school" (R. 370).

On August 17, 1967, the United States filed a motion to require further faculty desegregation in view of the fact that the school board planned to assign only 5 white teachers of 804 to two Negro high schools and 5 Negro teachers out of 554 to two predominantly white high schools (R. 376). The plaintiffs joined in the motion (R. 379), and the court held an evidentiary hearing September 5, 1967.

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feasible, distributed evenly among the various schools of the system.

"B. *Dismissals.* Teachers and other professional staff members will not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Court, and copies served upon opposing counsel within five (5) days after such dismissal, demotion, etc., is proposed.

"C. *Notice to New Staff Members.* In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially desegregated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

"D. *Encouragement of Voluntary Faculty Tranfers.* The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred."

School Superintendent McKee testified that it was decided to limit faculty desegregation at the beginning to high schools because he anticipated less objection since one teacher would not have the pupils for as much of the day in high school classes (R. 459-460). He also decided to integrate faculties only in schools within the city limits because of the need for close supervision and special protection which was more difficult in sparsely settled areas of the county (R. 461). The superintendent said he was having some difficulty finding white teachers who would agree to assignments in Negro schools, although there was no difficulty finding Negroes willing to teach in white schools (R. 466, 469, 470). The superintendent had engaged 12 or 13 white teachers for Negro schools, but only 5 of them actually finally accepted the assignment (R. 468). All 5 Negroes initially picked for white schools actually undertook such assignments (R. 468-469). Mr. McKee indicated that he had not assigned more Negro teachers, even though they were available, because he had not been able to get more whites to volunteer for assignments to Negro schools (R. 469), and he wanted to keep the number of Negroes and whites in balance (R. 481). The annual faculty turnover or replacement rate in Montgomery is about 10% of the total staff (R. 478).

At the end of the hearing the court heard arguments, but took no action to make a ruling to affect the 1967-68 school year. The matter was kept under advisement without action by the court. During argument the judge made it plain that he had little "sympathy" with the request for relief at that time (R. 484).

6. Proceedings During 1968.

a. *In the District Court.* On February 1, 1968, the board filed a further pleading asserting it had 32 faculty employees teaching in schools predominantly of the other race, and that it planned further efforts for the coming year. The United States filed a motion (R. 389), joined by the private plaintiffs (R. 394), seeking further relief on the faculty question as well as relief on several other issues affecting desegregation. The court heard evidence February 9, 1968 (R. 495-694).

Superintendent McKee and Associate Superintendent Garrett testified that they had decided that in September 1968 they would assign Negro teachers to all of the white schools at once in "one fell swoop" (R. 556, 579). Mr. Garrett described the plans for faculty desegregation in the following testimony:

> Q. How many teachers do you estimate you will have in minority situations this coming year? A. Well, we have about thirty-five now. We are going to attempt—our plan is to try to get at least one into every junior high and every elementary, and then start—once we accomplish that, start around with the second one and the third one and so on, rather than to have three in one school and none in another.
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> Q. Well based on your— A. Roughly speaking, a minimum or—with thirty-five already there, we have fifty schools or thereabouts; I would say about a hundred or better.
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> Q. Based on your— A. I think that is practical; I believe we can accomplish that (R. 584).
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> The Court: My understanding, now, you are going to have this next year teachers of the minority race in every school in your system?

Witness: As far as humanly possible.

The Court: And how many do you expect to have in your—in your elementary schools, a minimum per school?

Witness: Two, at least.

The Court: And how many in your junior high, your minimum?

Witness: Two; maybe more.

The Court: All right.

Witness: Depending on what we come—

The Court: Now, let's go to percentages; what percentage do you expect to have in your high schools?

Witness: I just don't know. We haven't actually discussed that up to this point. I—I couldn't say.

The Court: Well, your race—your student population is sixty-forty?

Witness: Yes, sir.

The Court: Ultimately, that will be your optimum if you are going to eliminate the racial characteristics of your school through faculty—

Witness: (Nodded to indicate affirmative reply.)

The Court: —wouldn't it? It would have to be. (R. 598-599.)

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Q. Mr. Garrett, I believe you testified when I was examining you that you were going to have at least—at least one in each school, or am I wrong on that? A. I said we would try to start with one in every elementary school and then come back around with two, and if we were successful, maybe three; I don't have any preconceived notion about maximums, but I would rather have these distributed rather than to have three, say, in one school and none in another (R. 600).

In a memorandum opinion filed February 24, 1968, the court made findings that there were still about 15,000 Negro children and 25,000 white children in the system; that only 550 Negro children were attending traditionally white schools and no whites were in the Negro schools under the freedom of choice plan; that 32 classroom teachers were teaching pupils in schools predominantly of the opposite race; that the system employed about 550 Negro teachers and 815 white teachers; that most faculty desegregation was in the high schools and there was little, if any, faculty desegregation in the county's rural schools (R. 406). The court also noted that the vast majority of teachers newly hired after the June 1, 1967, faculty desegregation order, were still assigned to schools where their race was in the majority; that no Negro has yet been a sustitute in a white school; that during a semester where white substitute teachers were employed 2,000 times, only 33 white substitutes were employed in Negro schools; that there was "no adequate program for the assignment of student teachers on a desegregated basis"; and that there was no faculty desegregation in night schools (R. 406-407). The court concluded: "The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year 1968-69" (R. 407).

Judge Johnson, during the hearing, in a colloquy with Superintendent McKee, expressed the position, "I have gone along with this transition business for a good long while, but we have passed the transition period" (R. 544). Finding that the board had "failed to discharge the affirmative duty . . . to eliminate the . . . dual school system," the court held

it was "necessary and entirely appropriate to establish now more specific requirements governing minimum amounts of progress in the future . . ." (R. 409).

The order of February 24, 1968 (R. 413-414), as amended (R. 429), supplemented the desegregation plan approved June 1, 1967. The order, which is quoted below,[7] defined the objective of eliminating the racial identifiability of school faculties as requiring the assignment of faculty such that the ratio of Negro to white faculty members in each school would be substantially the same throughout the

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[7] "I

"FACULTY AND STAFF

"A. *Statement of Objective.* In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

"The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

"B. *Schedule for Faculty Desegregation.* 1. 1968-69. At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

"At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for the time being, other specific faculty and staff desegregation requirements for future years.

"C. *Means of Accomplishment.* If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filing vacancies, then it will do so by the assignment and transfer of teachers from one school to another.

"D. *Substitute Teachers.* Commencing in September, 1968, with the 1968-69 school year, the ratio of the number of days taught by white substitute teachers to the number of days

system. For the year 1968-69 the court ordered at least one minority race (white or black) teacher in each school with less than 12 teachers, and in larger schools at least one minority race teacher of every six teachers. The court reserved judgment on detailed requirements for future years. The court also ordered that substitute teachers, student teachers, and night school teachers should be assigned so that there was substantially the same racial ratio in each school.

On the school board's application for a stay pending appeal, a part of the faculty desegregation order was stayed by Judge Johnson.

b. *Action of the Court of Appeals.* On August 1, 1968, the Court of Appeals, by a divided vote, modified the faculty desegregation order.[8] The court struck from the decree all numerical ratios except the interim 1968-69 goal—a five-to-one ratio in large schools and a more liberal ratio in smaller schools—which was modified to read *"substantially* or *approximately five to one"* (emphasis added). The court

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taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

"Commencing with the 1968-69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only at predominantly white schools or only at predominantly Negro schools.

"E. *Student Teachers.* Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

"F. *Night Schools.* Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program."

[8] Trial court rulings pertaining to special efforts to desegregate a new high school were affirmed on appeal.

also rejected the plaintiffs' argument that the trial court should have set a target date for full integration and should have required immediate total desegregation of faculties in several new schools to be opened in 1968.

Judge Thornberry dissented, finding no basis in the record or the prior decisions for modifying the trial judge's experiment in establishing numerical ratios for faculty desegregation. Chief Judge Brown's dissent from the denial of rehearing *en banc* (joined in by Judges Wisdom, Thornberry, Goldberg and Simpson) argued that there was a need for specfic numerical targets for faculty desegregation plans to define the goal of schools unidentifiable as to race, as well as a need for specific target dates for compliance.

Reasons For Granting the Writ

This case me its plenary review on certiorari because it involves issues of considerable practical importance to the future of school desegregation, about which there is both a conflict among the circuits and an equal division among twelve active judges of the Fifth Circuit. The ruling below also conflicts with this Court's decisions in *Wallace* v. *United States,* 389 U.S. 215, and *Green* v. *County School Board,* 391 U.S. 430.

The case involves the powers of a district court in supervising the transition of a dual, segregated school system into a racially non-discriminatory system as required by *Brown* v. *Board of Education,* 347 U.S. 483 (*Brown I*); 349 U.S. 294 (*Brown II*). The court below set aside an order of the trial court which defines the long range goal for faculty desegregation to be to seek, over an indeterminate period of time, approximately the same proportion of Negro and white teachers in all schools of the system. By

striking the "numerical ratios" from the trial court's order, the panel majority below rejected this goal and left the faculty desegregation objective so vaguely defined as to impair the ability of district courts to assure substantial progress.

In addition to altering the long-term goal, the court below made three subsidiary rulings to which petitioners also object. One was the failure to set any target date or timetable for full faculty desegregation in Montgomery. Another panel of the Fifth Circuit had set a so-called "C" (for "compliance") day for full faculty desegregation by September 1970. *United States* v. *Board of Education of the City of Bessemer, Alabama,* 396 F.2d 44, 52 (5th Cir. 1968). Also the court diluted the trial judge's specific minimum goals for 1968 by adding the qualifying phrases "approximately" and "substantially." Finally, the court below refused the petitioners' request that the trial court be directed to require full faculty desegregation immediately in all newly established schools at the time faculties are first hired and assigned.

The issues should be viewed in the practical context of Montgomery County, Alabama. When this law suit was filed in May 1964, ten years after *Brown I,* the public schools were still totally segregated. No progress had been made voluntarily. In Montgomery, as was true in a Virginia county brought before this Court last term: "Racial identification of the system's schools was complete, extending not just to the composition of student bodies . . . but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities." *Green* v. *County School Board,* 391 U.S. 430, 435. As stated in *Green, supra,* at 436, "[t]he transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about . . . ." In Montgomery County, Alabama it became the

task of District Judge Frank M. Johnson, Jr. to supervise that transition.

The very same month this case was filed, this Court declared in *Griffin* v. *School Board,* 377 U.S. 218, 234, that "the time for mere 'deliberate speed' has run out . . . ." Yet, for four more years the District Judge patiently permitted the respondent school board to delay desegregation with a variety of transitional devices until he finally decided "We have reached the point where we must pass 'tokenism.'" (R. 431). The beginning of faculty desegregation had been repeatedly postponed until September 1967, although petitioners sought such relief from the outset of the case. Even after this Court ruled in late 1965 that faculty segregation must be considered in connection with school desegregation plans, in *Bradley* v. *School Board,* 382 U.S. 103, and *Rogers* v. *Paul,* 382 U.S. 198, Judge Johnson felt constrained by a ruling of the Fifth Circuit involving Mobile, Alabama, to delay faculty integration in Montgomery County until 1967 (R. 285). Finally, after four years of litigation, at a 1968 hearing, Judge Johnson warned the school officials that: "I have gone along with this transition business for a good long while, but we have passed the transition period" (R. 544). Judge Johnson entered a faculty desegregation order which demanded specific results in 1968 and clarified the ultimate goal to be pursued by the board. The order was justified by (a) a finding that only slight progress had been made theretofore and the board had not carried out its affirmative obligations under the Constitution,[9] (b) the similarity of the court-imposed requirements to the school authorities' own estimates as to how much faculty integration they could accomplish in

[9] See opinion of the district court at 289 F. Supp. 647, 649-652.

1968,[10] and (c) the school authorities' own expressions of uncertainty about the ultimate goal to be pursued in desegregating faculties.[11]

At an earlier stage (in the June 1, 1967 order) Judge Johnson had defined the goal generally (R. 370):

> The objective of the school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

This identical language was approved by this Court when it affirmed a decree in *Wallace* v. *United States*, 389 U.S. 215, affirming *Lee* v. *Macon County Board of Education*,

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[10] See the testimony of Associate Superintendent Garrett, in the Statement, *supra at* pp. 11-12. Judge Johnson noted his reliance on the board's planning: "What is actually required in the area of faculty desegregation in the high schools for the 1968-69 school year is very little—if any—more than the testimony reflects the school board planned without an additional court order. . . . This also applies to that part of the Court order as now amended requiring faculty desegregation for the other schools in the system. Thus, in the area of faculty desegregation, nothing more is required of the Montgomery County School Board by the order of February 24, 1968, than the law requires as a minimum at this stage of the desegregation process and very little, if any, is required more than the school board, by its testimony, advised this Court it was going to do anyway." (289 F. Supp. at 658.)

[11] Associate Superintendent's Garrett's testimony that he did not know the objectives of the earlier court order beyond a general understanding that "reasonable desegregation of faculty" was required, is quoted extensively in the opinion below. 400 F.2d 1, at 6, note 5.

267 F. Supp. 458, 489 (M.D. Ala. 1967). After this Court's action in *Wallace, supra*, on December 4, 1967, affirmed the objective that faculty assignments not be so arranged as to identify schools as tailored for one race and that teachers be distributed evenly among the various schools, Judge Johnson then entered the more specific order to assure specific results in Montgomery County. The order, which has largely been set aside by the judgment below, further elaborated the theme sounded in the earlier order and in *Wallace, supra*, by stating:

> A. Statement of Objective.
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> In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.
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> The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below. (R. 413).

The majority of the panel below eliminated the ratios from the decree, saying that compliance should not be decided solely by reference to the ratios, and that the faculty in a particular school need not mirror the racial composition of the total faculty of the system. In place of the trial judge's relatively precise goals the panel majority substituted only vague generalities about an "ideal racial balance":

> There must be a good faith and effective beginning and a good faith and effective effort to achieve faculty and staff desegregation for the entire system. Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty must be achieved as a final objective. (400 F.2d at 8.)
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> It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. . . . They [school boards] have the responsibility and should exercise the ingenuity to achieve a proper racial balance. (400 F.2d at 9.)

The vagueness of the majority's generalities about "ideal" and "proper" racial balances inevitably will leave school boards and trial judges in the circuit confused about the ultimate goal. Invariably those officials who resist the progress of desegregation will construe the ruling to justify tokenism which merely alters the all-white or all-black character of a faculty by adding one or two teachers of the other race. The confusion is compounded by the fact that the Fifth Circuit is equally divided, thus leaving the outcome of particular future cases to await the accident of the composition of future panels. We think the point made by Judge Brown's dissent below, about the need for specifics in faculty decrees is irrefutable as a general matter. But the need is even more imperative in Alabama, with its history of official resistance to desegregation, including the attempted intimidation of local school boards by the Governor and State Superintendent of Education to prevent faculty integration. See *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458, 465-470 (M.D. Ala. 1967), aff'd *sub nom. Wallace* v. *United States*, 389 U.S. 215.

Another practical impact of the judgment below is that it signals a cautious, go-slow attitude on faculty integration for trial judges in the circuit, since one of the first district judges in the area to attempt to push a board beyond mere tokenism in faculty integration has been reversed. This plainly will discourage other judges from attempting to formulate detailed goals for school boards to assure faculty integration progress.

Both in its vagueness and in its tendency to delay desegregation, the action below conflicts with this Court's decision in *Green* v. *County School Board*, 391 U.S. 430. *Green* emphasized the needs for action now and for a pragmatic appraisal of desegregation progress. *Green's* requirement is for "a plan that promises realistically to work, and promises to work *now*" (391 U.S. at 439). Both goals are thwarted by the panel's action here. Neither the Montgomery County board, nor the court below, has defined any ascertainable goal toward which progress can be measured now or later.

The decision also conflicts with *Wallace* v. *United States*, 389 U.S. 215, where the *per curiam* order summarily affirmed a decree resting on the same essential idea as the order which has now been set aside. As we read it, the order in *Wallace* (quoted *supra* at 19), covering 99 Alabama counties, calls for a faculty desegregation plan where teachers of differing races and qualifications are "evenly distributed" among the various schools of a system. The order involved here merely defines that objective more precisely.

Judge Johnson's order followed the precedents in other courts, and the action of the Fifth Circuit conflicts with decisions in four other circuits approving faculty desegre-

gation orders requiring that teachers of both races be distributed approximately evenly throughout the systems. See *Dowell* v. *School Board of Oklahoma City,* 244 F. Supp. 971, 978 (W.D. Okla. 1965), aff'd 375 F.2d 158, 164, 167 (10th Cir. 1967), cert. denied, 387 U.S. 931; *Coppedge* v. *Franklin County Board of Education,* 273 F. Supp. 289, 300 (E.D. N.C. 1967), aff'd 394 F.2d 410 (4th Cir. 1968); *United States* v. *School District 151 of Cook County, Illinois,* 286 F. Supp. 786, 798, 800 (N.D. Ill. 1968), aff'd, —— F.2d —— (7th Cir., Dec. 17, 1968), 37 U.S.L. Week 2371. The Eighth Circuit has said that the use of such a formula "comports with *Brown*" in *Kelley* v. *Altheimer School District,* 378 F.2d 483, 498, n. 24 (8th Cir. 1967); *cf. Yarbrough* v. *Hulbert-West Memphis School District,* 380 F.2d 962, 968-969 (8th Cir. 1967).

The *Dowell* case was the first reported case in which a district court required that the percentage of Negro teachers in each school should approximate their percentage in the entire system. It is notable that the percentage formula was first proposed by an expert panel of educators and not by lawyers. The court in *Dowell* made its ruling for the Oklahoma City system on the recommendations of a distinguished panel of educational administrators who devised the integration plan for that city at the court's invitation. The same formula was adopted by Judge Michie in the Western District of Virginia in *Kier* v. *County School Board,* 249 F. Supp. 239, 248 (W.D. Va. 1966), where the court said:

> . . . [t]he order of the court to be entered here envisions no . . . permanent race consciousness. It is merely intended to give redress for former faculty segregation on the premise that, had there been no discrimination to begin with, the Negro teachers employed by the county would have been as evenly distributed through-

> out the various schools in the system as, for want of a better analogy, those teachers with blue eyes or cleft chins.

In conclusion, it ought to be emphasized that the percentage goals adopted by the district court were sufficiently flexible to accommodate administrative difficulties. The goal was not an exact percentage but "substantially the same" ratio. But, if necessary, it would have been unobjectionable to define an area of leeway, as for example was done in *Dowell, supra,* where the court allowed a ten percent margin for individual school variations. *Dowell, supra,* 375 F.2d at 164. Nor did the order import any permanent notion of racial quotas into the school system. Nor did the order mandate that teachers be hired or fired on the basis of race. It merely required that within the context of a system formerly segregated by law where existing employees were about 60% white and 40% black, they be reorganized into a racially integrated pattern among the approximately 50 schools of the system. The mathematical ratios adopted by the court were justifiable as a necessary remedial measure to assure the "disestablishment of state-established segregated school systems," *Raney* v. *Board of Education,* 391 U.S. 443, 449. Approval of the use of such percentages as remedial measures offends no constitutional rule against consideration of racial factors, *United States* v. *Jefferson County Board of Education,* 372 F.2d 836, 876 (5th Cir. 1966), adopted *en banc,* 380 F.2d 385, cert. denied, 389 U.S. 840 (1967); *Wanner* v. *County School Board of Arlington County,* 357 F.2d 452 (4th Cir. 1966).

CONCLUSION

Wherefore, petitioners respectfully submit that the petition for certiorari should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 798

UNITED STATES OF AMERICA,

PETITIONER,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 404) as modified and amended (R. 428) is reported at 289 F. Supp. 647. The opinion of the Court of Appeals is reported at 400 F. 2d 1. The orders of the Court of Appeals denying rehearing, denying rehearing en banc and dissenting opinions are reported at 402 F. 2d 782.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTIONS PRESENTED

Must a school board, which has adopted immediate plans to completely desegregate its faculty, which has already made extensive numerical progress in faculty desegregation and which has consistently demonstrated meaningful good faith compliance with constitutional mandates to achieve a racially nondiscriminatory school system, be forced to assign faculty members according to a mathematical ratio fixed by the racial balance of the entire faculty?

STATEMENT

A. *IMMEDIATE PLAN TO COMPLETELY DESEGREGATE FACULTY.* The majority decision of the Court of Appeals, in affirming with modification the decision of the District Court, reiterated the school board's duty to desegregate its faculty and staff. The Court of Appeals stated that: "School boards must not use excuses to delay the achievement of full faculty and staff desegregation." (400 F. 2d 1 at p. 9).

The Court of Appeals made the following two modifications of the District Court's order:

First, the Court of Appeals ruled that the Montgomery County Board of Education, as a beginning in the 1968-1969 school year should have a ratio of at least substantially or approximately one to five faculty and staff members being of a different race from the majority. The District Court in the order of February 24, 1968, as amended on March 2, 1968, had ordered a strict one of every six faculty and staff members to be of a race different from the majority. (289 F.

Supp. 647 at p. 654). The Court of Appeals in making this modification recognized "the difficulties inherent in achieving a precise five-to-one ratio." (400 F. 2d 1 at p. 8).

Secondly, the Court of Appeals held that: "Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective." (400 F. 2d 1 at p. 8).

The District Court had ordered such a three to two ratio as the "ultimate objective" in faculty desegregation. (289 F. Supp. 647 at p. 658).

The Montgomery County Board of Education fully recognizes its constitutional duty to desegregate the faculty throughout this system to the end that "the pattern of teacher assignment to any particular school shall not be identified as tailored for a heavy concentration of either Negro or white pupils in the schools." (R. 370 and *U. S. v. Jefferson County Board of Education,* 372 F. 2d 836, aff'd en banc, 380 F. 2d 385, (5 Cir. 1967), cert. denied 389 U. S. 840, 19 L. Ed 2d 104, 88 S. Ct. 77 (1967). The fact that faculties in 53 out of 54[1] schools in this system have already in fact been desegregated shows that this plan has been immediately implemented.

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[1] The small, three teacher and predominately white rural school located at Pine Level, Alabama has not yet desegregated its full-time faculty. The three teachers in this school live nearby and have been teaching at the Pine Level, Alabama school for many years. The school board has definite plans and is committed to add a Negro teacher to the Pine Level school in the 1969-1970 school year.

B. EXTENSIVE NUMERICAL PROGRESS IN FACULTY DESEGREGATION. Pursuant to the Board's avowed plan and in accord with the directives of the Court of Appeals, progress in faculty desegregation has been accomplished and reported to the District Court. "Appendix A" (pp. 21-24 infra) to this brief is the portion of the report filed with the District Court on September 16, 1968, pertaining to full-time faculty desegregation.[2] This report shows 212 full-time faculty members to be teaching in 53 schools throughout the Montgomery County system where their race is presently in the minority.[3] The total full-time classroom faculty of the Montgomery system presently consists of 1,389 teachers. As previously noted, every school in the system now has a desegregated full-time faculty with the exception of the small predominately white rural school at Pine Level, Alabama.

The supplemental report which is attached as "Appendix B" (pp. 25-31 infra) to this brief was filed pursuant to the District Court's directive.[4] This report shows that during the school year commencing in

[2] This report was filed pursuant to the June 1, 1967, order of the District Court as implemented by the order of February 24, 1968, as amended March 2, 1968. As this appendix shows, this report was served on the Government and on the Plaintiffs below.

[3] 111 Negro teachers in predominantly white schools and 101 white teachers in predominately Negro schools. (Appendix "A" to this brief, pp. 23-24, infra.)

[4] This report was filed pursuant to the June 1, 1967 order of the District Court as implemented by the order of February 24, 1968, as amended March 2, 1968. As this appendix shows, this report was served on the Government and on the Plaintiffs below.

September of 1968 through December 15, 1968, 618 days were taught by substitute teachers in schools where their race is presently in the minority.[5] There was a total of 2,516 days taught during this period by all substitute teachers in the system. The December 16, 1968 report additionally shows that 14 out of a total of 54 night school teachers are teaching in minority assignments,[6] and that current progress in student teacher assignments, which will be increased before student teachers begin work in the Spring of 1969, presently reflects 28 out of 155 student teachers assigned to schools where their race is presently in the minority.[7] (During the Spring of 1968 there were 44 out of 289 student teachers in schools where their race was in the minority.)

The December 16, 1968, report further shows that four teachers out of 17 hired since September, 1968, have been placed in schools where their race is presently in the minority.[8]

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[5] 300 days taught by Negro substitute teachers in predominately white schools and 318 days taught by white substitute teachers in predominately Negro schools. (Exhibit A of Appendix "B" to this brief, pp. 27-28, infra.)

[6] 8 white night school teachers in two predominately Negro schools and 6 Negro night school teachers in two predominately white schools. Only four schools in the system offer night school courses and the faculties of all of these have been desegregated. (Exhibit C of Appendix "B" to this brief, p. 30, infra.)

[7] Seven white student teachers presently in predominately colored schools and 21 Negro student teachers in predominately white schools. (Exhibit D of Appendix "B" to this brief, pp. 30-31, infra.)

[8] Three new white teachers in predominately Negro schools and one new Negro teacher in a predominately white school. (Exhibit B of Appendix "B" to this brief, p. 29, infra.)

As reflected in the aforementioned reports, *all* schools in the Montgomery County system are *now* experiencing desegregation either through their full-time faculties, student bodies, or through both.

C. *DEMONSTRATED MEANINGFUL GOOD FAITH COMPLIANCE WITH CONSTITUTIONAL MANDATES TO ACHIEVE A RACIALLY NONDISCRIMINATORY SCHOOL SYSTEM.* The Court of Appeals recognized that the District Court had publicly complimented the Montgomery County Board some five times during the period from 1964 to 1967 "on its efforts toward achieving desegregation." (400 F. 2d 1, at pp. 2-3.)

On September 5, 1964, the District Court stated:

"The Court now specifically finds and concludes that in the case of each of the applicants (colored children applying for attendance in predominately white schools) whether the application was granted or denied, the action of the Montgomery County school authorities constituted a good faith implementation of the governing constitutional principles and a good faith compliance with the orders of this court." (R. 150 and 9 Race Rel. L. Rep. 1175.)

On May 5, 1965, the District Court stated:

"Let me say this; that I recognize the problems that exist in this particular school district, and I think the plaintiffs recognize them, and both parties in this law suit have, up to this point, demonstrated to me an awareness of their responsibilities not only to their clients, but to the school system, and I want to congratulate and compliment both

the plaintiffs and particularly the school board, Montgomery County School Board, for its efforts as demonstrated last fall, in complying with the law as that law was reflected in the order of this Court." (R. 445.)

On August 27, 1965, the District Court stated:

"From the evidence in this case and from the history of this case as known by the Court, the defendant board and Superintendent have complied with and are continuing to comply with the applicable law as decreed by this Court on July 31, 1964." (R. 234.)

On May 25, 1967, the District Court stated:

"I would like to say this to you here in the presence of the plaintiffs' and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as professional educators and not as politicians. This present attitude is demonstrated here at this time; this past conduct on the part of these officials has, without any doubt inured to the benefit of the students regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have accomplished this largely through—or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar

operations, is a considerable feat, for which this Community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate." (R. 448-449 and 400 F. 2d 1 at p. 3.)

Upon the conclusion of a hearing held on September 5, 1967, which is the first of the two hearings apparently forming the basis of the District Court's orders relating to faculty desegregation, the District Court stated from the bench:

"You are dealing here with a school system that you haven't had to take to your Appellate Courts a single time since you started. It is the only major school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they had been ahead of most of your other systems in every field." (R. 485 and 400 F. 2d 1 at pp. 3-4).

ARGUMENT

REASONS FOR DISALLOWANCE OF WRIT

I

REQUIREMENT OF MATHEMATICAL RATIOS IN FACULTY TRANSFER AND ASSIGNMENT IS UNWARRANTED UNDER FACTS AND APPLICABLE LAW.

The extensive progress which these respondents have made in faculty desegregation together with their avowed plans to further completely desegregate all faculties in the system renders the sweeping ratio requirement unnecessary and totally unjustified. The direction is clear. The objective is clear. The direction is

right. The objective is now being reached. The current school year, 1968-1969, is the second year this system has been engaged in teacher and staff desegregation.[9] In an area of human relations, as complex and delicate as that of pupil-teacher relations which is the virtual heartstring of education, tremendous progress has indeed already been made. The faculty in every school in the Montgomery County system, with the exception of the three-teacher school in Pine Level, has been desegregated; 212 teachers are now engaged in desegregated assignments, and substantial and real desegregation presently exists in the area of substitute teachers, student teachers and night school faculties.

The faculty desegregation plan in effect in the Montgomery System not only promises to work *now*; it is in fact working *now*. The letter and the spirit of *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968), have been met.

With such a substantial plan to completely desegregate faculty why then do these respondents so strenuously object to the ratio requirements as urged by the government?

Our answer is two-fold: (1) The racial ratio requirement constitutes an arbitrary and unwarranted burden on this board and is not supported by the mandates of the United States Constitution or of this Court. (2) To require faculty assignment according to a racial ratio would be to lose sight of critical in-

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[9] On August 18, 1966, the District Court set the school year of 1967-1968 as the date to commence faculty desegregation in Montgomery County. (289 F. Supp. 647, footnote 1, at pp. 649-650.)

dividual criteria imperative in quality faculty relations —and would undoubtedly lower the educational opportunities of all children in this system, regardless of race.

We must also go behind numbers and statistics, which in themselves speak progress, and look to the ultimate solution of the complex problems to be encountered. The District Court apparently recognized the administrative problems inherent in faculty transfer when on March 2, 1968, seven days after the Court had ordered two minority teachers in schools with less than 12 faculty members, this directive of the District Court was changed to one such minority teacher. (R. 428-429.) The administrative problems which the District Court must have envisioned in the amended order will multiply a thousand fold as the problems of day to day school administration develop together with the ominous task of finding teachers with the requisite skills necessary for the replacement of transferred personnel. It was brought out during the hearing in the District Court, and it is only logical, that a teacher in a particular school may play the piano, have an interest and aptitude for extracurricular endeavors, such as student organizations and honor societies, or have an interest in student counselling as well as being a classroom teacher. The small school will encounter faculty placement problems varied and different from those encountered by the large school and the individual personality and motivation of each teacher is critical in faculty placement. The imparting of knowledge from teacher to child is a very delicate and personal endeavor.

The Court of Appeals recognized these critical problems in holding that "Although a ratio of substantial-

ly or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective. *Consideration must be given to the availability of teaching personnel, sound school administrative procedures and other important factors.*" (Emphasis ours.) (400 F. 2d 1, at p. 8.) The standard of quality education demands that utmost care be given to the placement of teaching personnel. It cannot possibly be in the best interest of the school children of this Country, regardless of race, to callously discard the vital considerations of proper faculty placement as being "vague notions which permit subjective discrimination." (Petition, p. 7.)

It is noted that the Court of Appeals of the United States for the Fifth Circuit on June 3, 1968, speaking through Chief Judge John R. Brown, expressly rejected the imposition of the very same mathematical ratio as here urged upon the Court. *United States v. Board of Education of the City of Bessemer, et al.*, 396 F. 2d 44 (5 Cir. 1968). The Court of Appeals in discussing *United States v. Jefferson County Board of Education*, supra, stated in the *Bessemer* case:

> "We are requested to do both too much and too little. The school boards with a sincerity of counsel we do not question, urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges adds to and extends *Jefferson*. We think neither alternative is wise.

"First, we think it unwise and out of keeping with the declared goal and subsequent consistent practice of Circuit-wide uniformity to tinker with the model decree." (396 F. 2d 44 at pp. 49-50.)

The Court added:

"We think it important to do three positive things. The first is to rule out the voluntary approach. The second is to fix an immediate target date. The third is to fix the date—implicit in *Jefferson*—for full compliance." (396 F. 2d 44 at p. 50.)

The standards thus set forth by the Court of Appeals in *Bessemer* are equally applicable in Montgomery and provide a *realistic* plan that is working *now* to desegregate the faculty and staff of this system. *Green v. County School Board of New Kent County*, supra.

II

REQUIREMENT OF MATHEMATICAL RATIO WOULD DEFEAT ULTIMATE OBJECTIVE OF COMPLETE FACULTY AND STAFF DESEGREGATION.

The standard as adopted throughout the Country by which faculty desegregation is measured is that the assignment of teachers should be so "that the pattern of teacher assignment to any particular school should not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school." *United States v. Jefferson County Board of Education*, supra. A truly desegregated nonracially identified faculty is, of course, the real ultimate objective. There are many school systems throughout this Circuit and undoubtedly throughout the Nation which have very few or no colored teachers. There are other such systems which

have very few or no white teachers. This requirement, as sought by the government, of having the same ratio of majority to minority teachers in each school as is reflected by faculty distribution throughout the system (Petition, p. 5) is totally unrealistic and in many instances would "lock in" segregation. Some districts, as their "ultimate objective" would have over 80% of one race or the other teaching in each school in the system.[10] This situation, of course, is undesirable and places an impossible burden on school boards which are constantly competing with other boards for qualified Negro and white teachers, and an undue burden on the teachers themselves. The objective of uniformity would be lost with adoption of the government's position and lost also would be the rights of many children throughout the Country to obtain a truly desegregated education.[11]

Under the ratio "appropriate yardstick" (Petition, p. 5) as now urged by the government, faculty desegregation would not be measured by the consistently recognized standard as to whether the pattern of teacher assignment to any particular school is identifiable

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[10] For example, there were 14% Negro teachers in the Oklahoma City school system during the year 1964-1965. (*Dowell v. School Board of Oklahoma City*, 244 F. Supp. 971 at p. 976) while there were 78% Negro teachers in the District of Columbia school system during the school year 1966-1967; (*Hobson v. Hansen*, 269 F. Supp. 401, at p. 421); there are some districts in this Circuit with very few white teachers and other districts with very few Negro teachers.

[11] On page 8 of the Petition the government concedes that the ratio application would become Nationwide: "It is a matter that concerns virtually all school desegregation cases, in the North as well as in the South."

as tailored for a heavy concentration of either Negro or white pupils in the school, but rather by the ratio of white to Negro faculty members throughout the school system. This inevitably would result in a variable yardstick of utter confusion depending on the faculty composition in the various school districts throughout the Nation and in faculty desegregation being based on locality and subject to change from year to year rather than on well settled constitutional principles. Indeed the Fifth Circuit was wise in the case of *United States v. Board of Education of the City of Bessemer*, supra, in refusing to "tinker with the model decree" to the point of directing such an unwise, unfair and indeed, unconstitutional requirement.

III

THE REQUIREMENT OF FACULTY DESEGREGATION WITHOUT MATHEMATICAL OR RACIAL RATIO PERCENTAGES DOES NOT CONFLICT WITH PRIOR DECISIONS OF THE FIFTH CIRCUIT, OTHER CIRCUIT COURTS OF APPEAL, OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES.

As previously noted, and as stated in the panel decision of the Court of Appeals, the requirement of mathematical or racial percentage ratios was expressly rejected by the Fifth Circuit Court of Appeals in *United States v. Board of Education of the City of Bessemer*, supra.[12]

[12] Prior to the decision in *United States v. Board of Education of Bessemer*, supra, the Fifth Circuit Court of Appeals had refrained from requiring a fixed mathematical ratio in faculty desegregation in the cases of *United States v. Jefferson County Board of Education*, 372 F. 2d 836, aff'd en banc, 380 F. 2d 385 (5 Cir. 1967) cert. denied 389 U. S. 840, 19 L. Ed 2d 104, 88 S. Ct. 77 (1967); *Stell v. Board of Public Education for City of Savannah*, 387 F. 2d

The Eighth Circuit also rejected such a mathematical formula in the case of *Yarbrough v. Hulbert-West Memphis School District No. 4*, 380 F. 2d 962 (8 Cir. 1967).[18]

The Fourth Circuit in the case of *Bowman v. County Board of Charles City County, Virginia*, 382 F. 2d 326 at p. 329 (4 Cir. 1967) followed and applied the decision and uniform decree of the Fifth Circuit in the case of *United States v. Jefferson*, supra, and noted that:

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486 (5 Cir., December 1967); *Birdie Mae Davis v. Board of School Commissioners of Mobile*, 393 F. 2d 690 (5 Cir., March 1968). In accord with these decisions, the three Judge Court in the case of *Anthony T. Lee, et al., v. Macon County Board*, 267 F. Supp. 458 (M. D., Ala. 1967) involving 99 school districts throughout the State of Alabama, has imposed no mathematical ratio with regard to faculty desegregation.

[18] The Eighth Circuit in the *Yarbrough v. Hulbert-West Memphis School District No. 4*, supra, in discussing its prior decision in *Kelley v. Altheimer, Arkansas Public School District*, 378 F. 2d 483 (8 Cir. 1967) made the following statement:

> "We say in passing that this panel does not regard *Altheimer* as imposing any rigid mathematical formula which in certain situations could itself be arbitrary and without educational significance. We regard that case as one requiring a reluctant school board to get on with its task of achieving faculty and staff desegregation and assignment to comport with equitable and constitutional requirements divorced from racial considerations. Numbers and percentages per se are not the ultimate answer but, up to a point, they touch upon realities. This, we think, is the significance of *Altheimer*."

Thus, the Eighth Circuit did not impose as stringent a faculty requirement on a "reluctant school board" with but two schools, as the government now urges to be applied in Montgomery, Alabama, with 54 schools and to a school board which the District Court has on several previous occasions found to be complying in good faith with all orders of the Court.

"By that decree, (Jefferson-Uniform Decree) school boards are required to take affirmative steps to accomplish substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year and, wherever possible, to assign more than one member of the minority race to each desegregated faculty. As much should be required here."

The Fourth Circuit cautioned and concluded that:

"What is done on remand, however, must be done upon a supplemented record after an appraisal of the practical, administrative and other problems, if any, remaining to be solved and overcome."

The only Circuit Court of Appeals which has approved a faculty mathematical ratio requirement is the Tenth Circuit in the case of *Board of Education of Oklahoma City v. Dowell*, 375 F. 2d 158 (10 Cir. 1967), cert. denied 387 U. S. 931 (1967). The *Dowell* case, which contained the provision that the ratio was "*subject to a reasonable tolerance*" is further distinguished from the Montgomery County case in at least the following respects: (a) As pointed out by the District Court for the Western District of Oklahoma, the Negro faculty personnel, there involved, constituted but 14% of the total (*Dowell v. School Board of Oklahoma City*, 244 F. Supp. 971 at p. 976). The District Court decree there provided for "desegregation of all faculty personnel so that by 1970 the faculty ratio of whites to non-whites in each school would be the same as the faculty ratio of whites to non-whites in the entire school system, *with a reasonable tolerance of approximately* 10%." (Emphasis ours.) Thus, the Tenth Circuit in the *Dowell* case approved

faculty desegregation ranging from 4% to 24%. This is a far cry from a ratio of three to two. (b) The Board in the *Dowell* case had "presented no plan, it only reiterated its general intention to correct some of the existing unlawful practices." The case sub judice presents a far different situation with a school board that has a realistic desegregation plan which is effectively operating now. The two District Court cases, *Coppedge v. Franklin County Board of Education*, 273 F. Supp. 289 (E. D. N. C. 1967) aff'd 394 F. 2d 410 (4 Cir. 1968), and *Kier v. County Board of Augusta County, Virginia*, 249 F. Supp. 239 (W. D. Va. 1966), which require some degree of mathematical standard in faculty desegregation are each likewise clearly distinguished from the case at bar. In the *Coppedge* case there had been in fact, a case history of intimidation to the point of bomb threats and reprisals by the community toward retarding the desegregation plan. No such history exists in the Montgomery County system where we have an effectively operating plan. In the *Kier* case, the Court specifically noted that "of a total of over 10,000 school children, only slightly over 500 or 5% are Negro." It is obvious that problems and administrative burdens encountered by a school board with a relatively small student population, including only 5% Negroes, are not comparable to those of a system the size of Montgomery, Alabama.

Never has such a far reaching ratio balance requirement been directed by this Honorable Court. *Bradley v. School Board of Education of City of Richmond*, 382 U. S. 103, 15 L. Ed. 2d 187, 86 S. Ct. 224 (1965). It cannot be now asserted with validity that the de-

cision of the Court of Appeals is in conflict with applicable decisions of this Court, or that the decision of the Court of Appeals has departed from either the letter or the spirit of *Brown I*,[14] *Brown II*,[15] *Bradley*,[16] and *Green*.[17]

The proposed ratio provision as urged by the government contains built-in variables which, of course, will result in glaring inconsistences between the Circuits, between the States, and even between the various school districts within a given State.

IV

TO REQUIRE A SCHOOL BOARD WHICH IS MAKING MEANINGFUL AND IMMEDIATE PROGRESS IN FACULTY AND STAFF DESEGREGATION TO ADOPT "MATHEMATICAL RACIAL RATIO" AS "ULTIMATE OBJECTIVE" IS UNWARRANTED AND PREMATURE.

This Court in *Green v. County School Board of New Kent County*, supra stated:

> "It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress towards disestablishing state-imposed segregation."

The Court of Appeals in the opinion now before the Court stated:

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[14] *Brown v. Board of Education*, 347 U. S. 483, 98 L. Ed 873, 74 S. Ct. 686.

[15] *Brown v. Board of Education*, 349 U. S. 294, 99 L. Ed 1083, 75 S. Ct. 753.

[16] *Bradley v. School Board of Education of City of Richmond*, 382 U. S. 103, 15 L. Ed 2d 187, 86 S. Ct. 227.

[17] *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed 2d 716, 88 S. Ct. 1689.

"Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion, or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. Any conduct by any board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated. It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. School boards must not use excuses to delay the achievement of full faculty and staff desegregation." (400 F. 2d 1 at p. 8.)

This school board has demonstrated meaningful and actual progress in desegregating the full-time faculties in 53 out of 54 schools in this County, with 212 full-time faculty members presently teaching in schools where their race is in the minority. Much actual progress has already been achieved in the area of substitute teachers, student teachers and night school faculty desegregation.

The racial ratio requirement urged by the government, with its very questionable merit, built-in inconsistencies and inequities, is not warranted under the facts of this case.

The Court of Appeals has established 1970 as the completion date for full compliance.[18]

[18] *United States v. Board of Education of Bessemer, et al*, 396 F. 2d 44 at p. 52 (5 Cir. 1968).

Especially in view of the progress already demonstrated by this school board, it would be wise to assess the progress of the school board on such "completion date" rather than to now speculate as to what may or may not be then required.

As this Court stated in the case of *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912, 94 L. Ed 562, 70 S. Ct. 252, in denying the Petition for a Writ of Certiorari there requested:

> "Wise adjudication has its own time for ripening."

We do hereby state to this Court that the Montgomery County Board of Education will completely desegregate the faculty and staff of this system without the imposition of the arbitrary and educationally unsound racial ratio requirement.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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JOSEPH D. PHELPS
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Counsel for Respondents

January 29, 1969

APPENDIXES

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Arlam Carr, et al., plaintiffs,	:	
Vs.	:	
Montgomery County Board of Education, et al., defendants,	:	Civil Action No. 2072-N
United States of America, amicus curiae.	:	

Pursuant to the Decree and Order of this Court dated June 1, 1967, and the Decree and Order of this Court dated February 24, 1968, as amended March 2, 1968, and specifically in compliance with Section VII, REPORTS TO THE COURT, Subsection A. *Report of Choice Period;* Subsection B. *Report on Faculty Assignments;* and Subsection C. *Report After School Opening,* of said Order dated June 1, 1967, and in compliance with Section V, REPORTS, Subsection A. *Reports Previously Ordered,* Subsection B. *Faculty,* B-1, B-2, B-3 and B-4, Subsection C. *Transportation,* and Subsection D. *Jefferson Davis High School and Other New Schools;* comes now the defendants in the above styled cause and files this report with attached Exhibits.

HILL, ROBISON, BELSER AND PHELPS

By s/V. H. Robison
Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served by hand mail delivery a copy of this Report with Exhibits attached on Mr. Fred D. Gray, attorney of record for the Plaintiffs at his office at 352 Dexter Avenue, Montgomery, Alabama, and on Mr. Ben Hardeman, United States Attorney for the Middle District of Alabama, Northern Division, at his office in the Federal Building, Montgomery, Alabama, representing the United States of America, Amicus Curiae, on this 16th day of September, 1968.

s/V. H. ROBISON

MONTGOMERY PUBLIC SCHOOLS

TEACHING STAFF ASSIGNMENTS AS OF SEPTEMBER 15, 1968

	School	Negro	White	Total	Grades
1.	Baldwin Jr. High	4*	27	31	7-9
2.	Bear	2*	14	16	1-6
3.	Bellinger Hill	1*	5	6	1-6
4.	Bellingrath Jr. High	6*	40	46	1-9
5.	Billingslea	7	1*	8	1-6
6.	Booker Washington Elementary	14	4*	18	1-6
7.	Booker Washington Jr. High	21	6*	27	7-9
8.	Booker Washington Sr. High	26	7*	33	10-12
9.	Capitol Heights Elementary	3*	16	19	1-6
10.	Capitol Heights Jr. High	4*	31	35	7-9
11.	Carver Elementary	21	5*	26	1-6
12.	Carver Jr. High	20	4*	24	7-9
13.	Carver Sr. High	43	8*	51	10-12
14.	Catoma	1*	7	8	1-6
15.	Chilton	1*	5	6	1-6
16.	Chisholm	3*	21	24	1-6
17.	Cloverdale Jr. High	6*	35	41	1-9
18.	Crump	1*	10	11	1-6
19.	Daisy Lawrence	18	6*	24	1-6
20.	Dalraida	2*	15	17	1-6
21.	Dannelly	4*	20	24	1-6
22.	Davis	3*	18	21	1-6
23.	Dunbar High	41	5*	46	1-12
24.	Fews	16	5*	21	1-6
25.	Flowers	3*	20	23	1-6
26.	Floyd Jr. High	6*	37	43	1-9
27.	Forest Avenue	1*	9	10	1-6
28.	Georgia Washington High	40	7*	47	1-12

	School	Negro	White	Total	Grades
29.	Goode Street	3*	7	10	1-6
30.	Goodwyn Jr. High	6*	37	43	7-9
31.	Hale	19	3*	22	1-6
32.	Harrison	3*	15	18	1-6
33.	Hayneville Road Jr. High	41	8*	49	1-9
34.	Head	2*	14	16	1-6
35.	Highland Avenue	1*	11	12	1-6
36.	Highland Gardens	4*	20	24	1-6
37.	Houston Hill Jr. High	13	6*	19	7-9
38.	Jefferson Davis High	7*	29	36	10-12
39.	Johnson	3*	17	20	1-6
40.	Lanier High	9*	81	90	10-12
41.	Lee High	10*	72	82	10-12
42.	Loveless Jr. High	38	5*	43	1-9
43.	McDavid	17	4*	21	1-6
44.	McIntyre Jr. High	31	9*	40	1-9
45.	MacMillan	1*	10	11	1-6
46.	Madison Park	8	2*	10	1-6
47.	Montgomery County High	2*	19	21	1-12
48.	Morningview	2*	15	17	1-6
49.	Paterson	20	6*	26	1-6
50.	Pendar Street	3*	15	18	1-6
51.	Pike Road Jr. High	1*	7	8	1-9
52.	Pine Level		3	3	1-6
53.	Pintlala Jr. High	2*	7	9	1-9
54.	Southlawn	1*	9	10	1-6
	Speech Therapists	1**	4**	5**	
		566	823	1,389	
		111*	101*	212*	

* Teaching in Minority Assignments

** Teach in all elementary schools

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ARLAM CARR, ET AL., PLAINTIFFS,	:	
VS.	:	
MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL., DEFENDANTS,	:	CIVIL ACTION
	:	No. 2072-N
UNITED STATES OF AMERICA, AMICUS CURIAE.	:	

In compliance with the Orders of this Court, Part VII of the June 1, 1967 Order and Part V of the February 24, 1968 Order of this Court, "REPORTS," the following information is submitted as attached exhibits:

"Exhibit A"—Report of Substitute Teachers between September 15 and December 15, 1968.

"Exhibit B"—New Teachers Hired Between September 15 and December 15, 1968.

"Exhibit C"—Report of Teacher Assignments in Night Schools between September 15 and December 15, 1968.

"Exhibit D"—Report of Student Teacher Assignments as of December 15, 1968.

HILL, ROBISON, BELSER AND PHELPS

By s/V. H. ROBISON

Attorneys for the Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served by hand mail delivery a copy of the report with exhibits attached on Mr. Ben Hardeman, United States Attorney for the Middle District of Alabama, Northern Division, at his office in the Federal Building, Montgomery, Alabama, representing the United States of America, Amicus Curiae, and by ordinary mail, postage prepaid, on Fred D. Gray, Attorney of Record for the plaintiffs, at his office at 352 Dexter Avenue, Montgomery, Alabama, all on this the 16th day of December, 1968.

s/V. H. ROBISON

EXHIBIT A

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

REPORT OF SUBSTITUTE TEACHERS BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1968

Name of School	Days Taught By Negro Substitute Teacher	Days Taught By White Substitute Teacher
Baldwin Jr. High	6*	87
Bear	3*	12
Bellinger Hill	2*	3
Bellingrath Jr. High	25*	99
Billingslea	6	5*
Booker Washington Elem.	24	25*
Booker Washington Jr. High	39	21*
Booker Washington Sr. High	31	26*
Capitol Heights Elem.	8*	19
Capitol Heights Jr. High	17*	64
Carver Elementary	43	11*
Carver Jr. High	40	14*
Carver Sr. High	34	50*
Catoma	26*	8
Chilton	0	4
Chisholm	4*	47
Cloverdale	20*	63
Crump	4*	11
Daisy Lawrence	15	2*
Dalraida	5*	23
Dannelly	12*	31
Davis	11*	41
Dunbar	55	0
Fews	14	18*
Flowers	4*	48
Floyd	17*	75
Forest Avenue	3*	14
Georgia Washington	18	35*
Goode Street	10*	29

Name of School	Days Taught By Negro Substitute Teacher	Days Taught By White Substitute Teacher
Goodwyn Jr. High	21*	62
Hale	43	35*
Harrison	3*	15
Hayneville Road	43	8*
Head	4*	38
Highland Avenue	3*	10
Highland Gardens	9*	31
Houston Hill Jr. High	20	2*
Jefferson Davis High	12*	36
Johnson	3*	23
Lanier	16*	90
Lee	34*	45
Loveless	128	27*
McDavid	33	17*
McIntyre	96	8*
MacMillan	5*	22
Madison Park	15	4*
Montgomery County High	0	33
Morningview	3*	27
Paterson	43	10*
Pendar Street	8*	35
Pike Road	0	0
Pine Level	0	0
Pintlala	0	5
Southlawn	2*	8
	1,040	1,476
	300*	318*

In compliance with Section V, B. 2 of the Supplemental Plan.

* Teaching in Minority Assignments

EXHIBIT B

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

CITY AND COUNTY

MONTGOMERY, ALABAMA

SUPERINTENDENT'S OFFICE DECEMBER 15, 1968

NEW TEACHERS HIRED BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1968

	Name	Race	School
1.	Louise H. Nachman	White*	Paterson Elem.
2.	Ether D. Boyd	Negro	Booker Washington Sr.
3.	Judy D. Johnson	White	Lanier Sr. High
4.	Odell S. Graham	Negro	Loveless Elem.
5.	Jean P. Tashlik	White	Baldwin Jr. High
6.	Susan Diane Setzer	White	Crump Elem.
7.	Carol deBlois	White*	Hale Elem.
8.	Pamela G. Priest	White	Jefferson Davis Sr.
9.	Dorothy Leona Jones	White	Baldwin Jr. High
10.	Ann Griswold	White	Children's Center
11.	Lydia S. Williams	Negro*	Davis Elem.
12.	Virginia F. Sewell	White	Forest Ave. Elem.
13.	Charles L. Williamson	White	Capitol Hgts. Jr. High
14.	Rosa R. Kelly	White*	McIntyre Elem.
15.	Dorothy R. Pegues	White	Southlawn Elem.
16.	Rebecca Ann McArthur	White	Goode Street Elem.
17.	Marian Shultz Stephenson	White	Lanier Sr. High

* Teaching in Minority Assignments

EXHIBIT C

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS
CITY AND COUNTY
MONTGOMERY, ALABAMA

REPORT OF TEACHER ASSIGNMENTS IN NIGHT SCHOOLS BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1963

School	White Teachers	Colored Teachers	Total
Booker Washington	4*	9	13
Carver	4*	12	16
Lanier	12	3*	15
Lee	7	3*	10
Total	27	27	54
	8*	6*	

* Teaching in Minority Assignments

EXHIBIT D

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

REPORT OF STUDENT TEACHER ASSIGNMENTS AS OF DECEMBER 15, 1963

Name of School	White Student Teachers	Negro Student Teachers
Baldwin Junior High	1	
Bear Elementary	2	1*
Booker Washington Elementary		6
Booker Washington Jr. High		7
Booker Washington Sr. High	1*	12
Capitol Heights Elementary		1*
Capitol Heights Jr. High	3	
Carver Elementary		2
Carver Junior High	1*	2
Carver Senior High		11

Chisholm Elementary	1	
Cloverdale Junior High	2	
Crump Elementary		1*
Daisy Lawrence Elementary		3
Dannelly Elementary	3	
Davis Elementary	4	1*
Dunbar		3
Fews Elementary		3
Flowers Elementary	1	1*
Floyd Junior High	3	
Georgia Washington		3
Goode Street Elementary		1*
Goodwyn Junior High	3	
Hale Elementary		2
Hayneville Road Junior High		10
Highland Gardens Elementary	1	1*
Houston Hill Junior High	1*	7
Jefferson Davis Senior High	2	2*
Johnson Elementary	2	1*
Lanier Senior High	6	4*
Lee Senior High	3	4*
Loveless Junior High		9
McDavid Elementary	3*	2
McIntyre Junior High		4
MacMillan Elementary		1*
Montgomery County High	2	
Paterson Elementary	1*	2
Pendar Street Elementary		1*
Southlawn Elementary		1*
	46	109
	7*	21*

* Teaching in Minority Assignments

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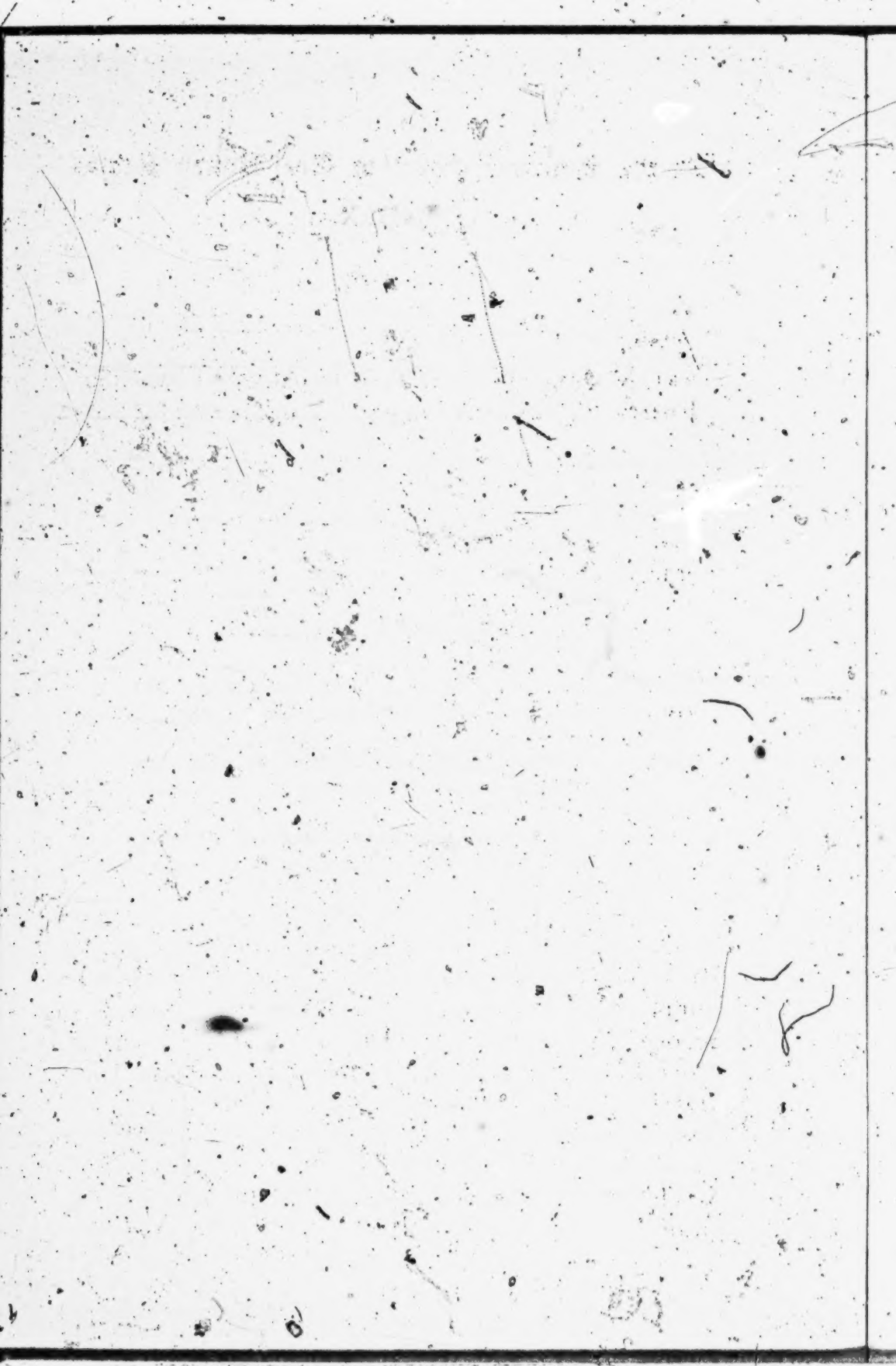

In the Supreme Court of The United States

OCTOBER TERM, 1968

No. 997

ARLAM CARR, JR., A MINOR, BY ARLAM CARR AND JOHNNIE CARR, HIS PARENTS AND NEXT FRIENDS, ET AL.,

PETITIONERS,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 404) as modified and amended (R. 428) is reported at 289 F. Supp. 647. The opinion of the Court of Appeals is reported at 400 F. 2d 1. The orders of the Court of Appeals denying rehearing, denying rehearing en banc and dissenting opinions are reported at 402 F. 2d 782.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

STATEMENT

The petition filed by the plaintiffs below is directed to the identical orders as is the petition heretofore filed by the government and docketed in December, 1968, as Case No. 798. In response to the statement contained in the brief of the plaintiffs below, these respondents adopt the statement previously set forth in the brief in opposition to the petition filed by the government in Case No. 798.

QUESTION PRESENTED

The real question presented in the petition, as filed by the plaintiffs, Arlam Carr, Jr., et al., is exactly the same as these respondents have already stated in their brief in opposition to the petition filed by the government:

> "Must a school board, which has adopted immediate plans to completely desegregate its faculty, which has already made extensive numerical progress in faculty desegregation and which has consistently demonstrated meaningful good faith compliance with constitutional mandates to achieve a racially nondiscriminatory school system, be forced to assign faculty members according to a mathematical ratio fixed by the racial balance of the entire faculty?"

ARGUMENT

REASONS FOR DISALLOWANCE OF WRIT

These respondents adopt the argument set forth in their brief in opposition to the writ of certiorari in Case No. 798.

As additional argument the respondents show that the petition filed by the plaintiffs below, as does the petition filed by the government, completely ignores the following factors:

1. The Montgomery County Board of Education has adopted a meaningful plan for faculty desegregation. The directives of the Court of Appeals in the opinion below are clear:

> "Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion, or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. *Any conduct by any board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated.* It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. *School Boards must not use excuses to delay the achievement of full faculty and staff desegregation.*" 400 F. 2d 1 at page 8. (Emphasis ours.)

2. The plan presently in operation is working *now* to accomplish full faculty desegregation.

3. The numerical progress already achieved is reflected in Appendices A and B to the brief of the respondents in opposition to the government's petition

for a writ of certiorari.[1] This progress establishes the effectiveness of this board's desegregation plan and is substantive proof that the plan is in fact working *now*.

4. The Fifth Circuit has clearly stated that 1970 is the completion date for compliance.[2]

5. The vital individual considerations that are inherent in sound and effective faculty placement.

6. School boards, under the duty to achieve a racially nondiscriminatory school system, also have the duty to provide quality education for white and Negro children.

7. A mathematical ratio requirement in faculty assignment of necessity would force teachers to be assigned and transferred on the basis of numbers, percentages and statistics rather than on the educational needs of school children.

8. A mathematical ratio for teacher assignment based on the current ratio of the entire faculty would place the Court in the position of arbitrarily dictating the internal operative decisions of the school board in faculty employment and assignment.

9. The opening of a new school presents unusual administrative problems; such as, course scheduling, student classroom assignments, organization of school activities, installation of special classroom equipment

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[1] The plaintiffs were served with copies of the reports embodied in Appendices A and B to respondents' brief in opposition to the government petition.

[2] *United States v. Board of Education of Bessemer, et al.*, 396 F. 2d 44, at page 52 (5 Cir. 1968).

and classroom aids, the purchase, indexing and cataloging of library books and periodicals and many other organizational details. The faculty assists with many of these initial organizational problems and special attention must be given to the selection of the faculty. The students attending a new school come from existing schools. Teachers assigned to a new school come primarily by transfer from the existing schools which have lost student population. The plaintiffs below take the position that the racial ratio of white to Negro teachers employed in the entire school system is a controlling criterion in the faculty selection for a new school opening. These respondents believe the controlling criteria are to provide quality education in all schools without regard to race or color, by a staff and faculty which is not designed for a heavy concentration of either white or Negro children.

The plaintiffs rely on *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed 2d 716, 88 S. Ct. 1689. In that case, this Court again stated the school board's duty to "establish that its proposed plan promises meaningful and immediate progress toward disestablishing state imposed segregation." This board recognizes its duty to desegregate faculty to the end that no school will have faculty members designed for a heavy concentration of either white or Negro children. The administrative procedures involved in accomplishment of this recognized objective must be left to the school board, if quality

education, regardless of race, is to be maintained. As the Eighth Circuit stated in *Yarbrough v. Hulbert-West Memphis School District No. 4*, 380 F. 2d 962, "Numbers and percentages per se are not the ultimate answer." The ultimate answer is, of course, a racially nondiscriminatory school system. We respectfully submit that the Constitution of the United States does not prohibit a school board from achieving such an ultimate solution by the use of educationally acceptable standards that is, without the imposition of racial ratios which would be arbitrary and without educational significance.

The plaintiffs call upon this Court for more than a constitutional directive for respondents to provide a racially nondiscriminatory school system. Plaintiffs seek to have the Court enter into the complex details of just how full compliance is to be achieved. The nationwide, circuitwide and statewide inconsistencies which would inevitably result from the imposition of the proposed racial ratio requirement exemplify that such a proposal indeed lacks wisdom. The progress which these respondents have made in the area of faculty desegregation clearly evidences that a racial ratio requirement is unnecessary. The plaintiffs' constitutional rights have been fully protected by the Court of Appeals and by the recognition by these respondents of their constitutional duty to furnish a nondiscriminatory school system. Plaintiffs need not and should not call upon this Court for more.

CONCLUSION

For the foregoing reasons it is respectfully sub-

mitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondents

February 14, 1969

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 798

UNITED STATES OF AMERICA, PETITIONER

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

No. 997

ARLAM CARR, JR., ET AL.

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 404–418, 430–436) [1] is reported at 289 F. Supp. 647. The majority

[1] The references are to the pages of original record on file in this Court, because the accelerated schedule under which petitioners have printed their briefs and the record did not permit substituting citations to the printed Appendix. However, for the convenience of the Court and the parties, the Appendix indicates (between dashes) the pages of the original record—all of which has been printed.

opinion of the original panel of the court of appeals is reported at 400 F. 2d 1, and the dissenting opinion at 402 F. 2d 782. The order denying the petitions for rehearing *en banc* and the dissenting opinion of Chief Judge Brown from the denial of rehearing *en banc* (joined by four other active circuit judges) are reported at 402 F. 2d 784.

JURISDICTION

The order of the court of appeals denying the petitions for rehearing *en banc* was entered on November 1, 1968. The petition for a writ of certiorari in No. 798 was filed on December 4, 1968, and in No. 997 on January 30, 1969, and both petitions were granted on March 3, 1969. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court correctly required the school board, which had been ordered to desegregate its faculty and which had failed to implement a constitutionally sound faculty desegregation program, to reassign its faculty members so that the ratio of Negro to white teachers in each school would be substantially the same as the ratio of Negro to white teachers throughout the system.

STATEMENT

1. *Procedural history.* This school desegregation suit was brought in the Middle District of Alabama by Negro parents and school children in 1964. The district court *sua sponte* named the United States

amicus curiae with the rights of a party.[2] On July 31, 1964, respondents were enjoined from operating racially segregated schools "except in strict accordance with the opinions and decrees" of the district court, were required to accept and to process applications for transfer of Negro students in the first, tenth, eleventh and twelfth grades, and were ordered to file a "detailed plan for the operation of Montgomery County school system commencing with the 1965–66 school year; such plan to be designed to eliminate segregation of students based on race and the complete elimination of the biracial school system within a reasonable time" (R. 103–110).

Pursuant to this order, the Montgomery County Board of Education instituted a plan allowing the transfer of certain Negro students to previously all-white schools (R. 112–148). This plan continued in operation until March 22, 1966, when the district court entered an order requiring respondents to put into effect a freedom-of-choice plan, close certain inadequate Negro schools and begin desegregation of faculties in the fall of 1966 (R. 274–284). After the decision of the Court of Appeals for the Fifth Circuit in *Davis* v. *Board of School Commissioners of Mobile County*, 364 F. 2d 896 (C.A. 5), which allowed the Mobile County school system an additional year to implement faculty desegregation, the district court

[2] There has never been any challenge by respondents to the authority of the district court to take this step. In any event, the United States is now authorized to intervene in the suit under Section 902 of the Civil Rights Act of 1964, 42 U.S.C. 2000h–2.

sua sponte amended its order in this case to give respondents the same period of time (R. 285). An order conforming substantially to the model decree of *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836 (C.A. 5), affirmed on rehearing *en banc*, 380 F. 2d 385, certiorari denied, 389 U.S. 840, was entered on June 1, 1967 (R. 364).

On August 17, 1967, the United States filed a "Motion for Further Relief" alleging that respondents had failed to meet faculty desegregation requirements for the current year and asking that they be ordered to assign additional faculty members to positions where their race was in the minority (R. 376–377). After a hearing was held in the district court on this motion on September 5, 1967 (R. 450–493), and after the deposition of the school superintendent was taken, a second "Motion for Further Relief" was filed by the United States on February 7, 1968. A hearing on both motions was held on February 9, 1968.

2. *The decision of the district court.* The district court (Johnson, J.) found that, of the 550 Negro and 815 white teachers in the system, only 32 were on faculties where their race was in the minority, most of them assigned to teaching high school grades within the city of Montgomery. The court noted that "little, if any," faculty desegregation had occurred in the system's schools outside the city itself. After the entry of the 1967 order to desegregate faculties, 75 newly hired teachers had been assigned or transferred to faculties where their race was in the majority. Of the 26 white and 6 Negro teachers hired during the

first half of the 1967–68 school year, only six white teachers had been assigned to schools predominantly of another race. No desegregation of the substitute teachers, student teachers or night school faculties had occurred and none had been planned.

Finding that "the defendants have failed to discharge the affirmative duty the law places upon them to eliminate the operation of a dual school system," the district court concluded that it was "necessary and entirely appropriate to establish now more specific requirements" (Pet. No. 798, p. 20). In an order entered on February 24, 1968, the district court directed the school board, as an "ultimate objective" in disestablishing faculty segregation, to "be guided by the ratio of Negro to white faculty members in the school system as a whole" and ordered the board to achieve a racial ratio of teachers throughout the system (Pet. No. 798, p. 4). The district court required specific partial compliance for 1968–69, but denied the government's request that the ultimate ratio be implemented immediately in three schools being opened for the first time.

3. *The decisions of the court of appeals.* The school board appealed, and the plaintiffs and the United States cross-appealed from the denial of the request for the immediate complete desegregation of faculties at newly opened schools. A panel of the court of appeals (Judge Thornberry dissenting) modified that part of the district court's order which set forth the ultimate objective. It held that the standard of "good faith and effective effort" was sufficient on the ground

that a proportional requirement would not permit consideration of "the availability of teaching personnel, sound school administrative procedure, and other important factors," and because the entry of any more specific order would be "to tinker with the model decree" of the *Jefferson* case (Pet. No. 798, pp. 60–63).

Petitions for rehearing and for rehearing *en banc* were denied by the panel and by a 6-to-6 vote of the active circuit judges.

ARGUMENT

INTRODUCTION AND SUMMARY

Prior to the 1964–65 school year the respondent school board was operating a school system with "precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed * * *. Racial identification of the system's schools was complete, extending not just to the composition of student bodies at the two schools but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities." *Green v. County School Board of New Kent,* 391 U.S. 430, 435. The school board's constitutional obligation, as articulated by this Court most recently in its unanimous *Green* opinion, included an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U.S. at 437–438. This case concerns a standard by which courts are to measure whether the required elimination of racial dis-

crimination with respect to faculty assignments has been accomplished.

Our starting point is that in a truly unitary system the racial composition of a school's student body is not determinable from the racial composition of its faculty. Only if racial discrimination is the standard for faculty assignment will all-Negro, traditionally Negro and predominantly Negro schools have faculties which are preponderantly Negro, while schools with small or no Negro student enrollments have correspondingly low ratios of Negro faculty members or none at all. The Court of Appeals for the Fifth Circuit recognized this principle when it fixed, as the "objective" of faculty desegregation, the standard "that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school." *United States* v. *Jefferson County Board of Education*, 380 F. 2d 385, 394 (C.A. 5, *en banc*), certiorari denied, 389 U.S. 840.

Our submission is that the standard of "racial nonidentifiability" in the conversion from a dual to a unitary system is met by refining the general terms of the *Jefferson* decree as the district court did in this case. After determining the ratio of white to Negro teachers in the system as a whole ("approximately 3 to 2"), Judge Johnson ordered that the respondents "be guided" as to faculty desegregation by that ratio, and, more specifically, that teachers be hired and assigned so that "in each school the ratio of white to Negro faculty members is substantially the same as it

is throughout the system" (Pet. No. 798, p. 25). Such a distribution of faculty members would obviously eliminate "identifiability" based on race since the racial composition of all faculties would be substantially the same.

In addition, we argue that the method ordered by the district court was proper because it brings the faculty structure of the school system approximately to where it would have stood but for the impermissible standards of assignment applied by the respondents. The principle governing the district court's duty in structuring relief for the pattern of discrimination shown by this record is that its decree must "so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States*, 380 U.S. 145, 154. The "discriminatory effects of the past" can effectively be wiped out as to racial faculty assignments by a random distribution of the school system's teachers. Presumably, the most likely white-to-Negro faculty ratio at any single school under a random distribution would be "substantially the same as it is throughout the system." Hence the district court was correct in selecting this standard for inclusion in its equitable remedy.

I

THE DISTRICT COURT'S STANDARD IS AN APPROPRIATE MEANS OF ERASING THE RACIAL IDENTIFIABILITY OF SCHOOLS WHICH HAVE BEEN TOTALLY SEGREGATED

There is no disagreement on this record that prior to the institution of suit in 1964, respondents operated

a totally segregated dual system of public elementary and secondary education. Negro students were assigned, solely on account of their race, to separate "Negro schools," staffed entirely by Negro principals and teachers. White students attended "white schools," where enrollment and faculty were all white.

In *Rogers* v. *Paul*, 382 U.S. 198, and impliedly in *Bradley* v. *School Board of City of Richmond*, 382 U.S. 103, this Court held that equality of educational opportunity is unconstitutionally denied not only by the racial segregation of public school students but also by racial allocation of teachers. In both cases, district courts were directed to take prompt remedial measures with respect to faculty segregation. Pursuant to this principle, the Court of Appeals for the Fifth Circuit included, in the model circuit-wide decree issued in *United States* v. *Jefferson County Board of Education*, 380 F.2d 385 (*en banc*), certiorari denied, 389 U.S. 840, a section dealing specifically with the desegregation of faculty and staff. The *Jefferson* decree ordered school boards to "establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school." 380 F.2d at 394.

Respondents apparently accept the generally phrased standard laid down in the *Jefferson* decree—*i.e.*, that schools not be racially identifiable by their faculties.[3] Indeed, they could not do otherwise, for this

[3] Respondents' Brief in Opposition in this Court, after quoting the language of the *Jefferson* decree, states: "A truly desegregated nonracially identified faculty is, of course, the real ultimate objective" (Br. in Opp. 12).

Court recently approved the requirement that "racial identifiability" of schools be erased. In *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 442, the school board was directed to "fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools."

An obvious characteristic of a "white school" or a "Negro school" in a dual system is the racial composition of its faculty. Schools which have all-Negro faculties as a result of racial assignment remain "Negro schools" even if some white students are assigned to attend them. The objective of a "nonracially identified faculty" (Br. in Opp. 12) is achieved when, so far as racial distribution is concerned, the faculties of the various schools in the system are substantially indistinguishable from one another. Indeed, in his testimony the associate superintendent of the respondents' school system agreed with the court that an approximate ratio of three white to two Negro teachers in each of the schools in the system would be the optimum in removing the racial identifiability of the schools (R. 598–599).

That was the objective fixed by the district court. In directing that respondents assign teachers so that "in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system" (Pet. No. 798, p. 25), Judge Johnson was specifying how "nonidentifiability" could be achieved in a manner subject to judicial evaluation.

Nor did the district court stand alone in adopting

this yardstick by which to measure the success of a faculty desegregation program. The Courts of Appeals for the Tenth and Fourth Circuits have approved school desegregation orders which require, as a remedy to eliminate faculty segregation, "the same approximate percentage of non-white teachers in each school as there now is in the system." *Dowell* v. *School Board of Oklahoma City,* 244 F. Supp. 971, 978 (W.D. Okla.), affirmed, 375 F. 2d 158, 167 (C.A. 10), certiorari denied, 387 U.S. 931; *Coppedge* v. *Franklin County Board of Education,* 273 F. Supp. 289, 300 (E.D. N.C.), affirmed, 394 F. 2d 410 (C.A. 4). See also *Kier* v. *County School Board of Augusta,* 249 F. Supp. 239, 247 (W.D. Va.); *United States* v. *School District 151 of Cook County,* 286 F. Supp. 786, 798 (N.D. Ill.), affirmed, 404 F. 2d 1125.[4] And the Court

[4] There is no substance to the distinctions which respondents assert between this case and the cited appellate and district-court decisions (Br. in Opp. 16–17). The fact that the percentage of Negro students and faculty is lower in Oklahoma City and Augusta County than it is in Montgomery County does not affect the identifiability of faculties by race in any of the systems. Also, the alleged "administrative burdens" are, as we demonstrate at pp. 16–19, *infra*, insubstantial. Nor does the existence of intimidation in Franklin County—which assuredly affects the operation of freedom-of-choice plans of student assignment—bear directly on faculty desegregation. And finally, we do not read the "tolerance" approved in *Dowell* as permitting the extent of faculty desegregation to vary as much as respondents suggest. The permitted "tolerance," in our view, relates to the number of Negro teachers in each school, which may vary by 10% of the number to be assigned under a 14% allocation. In other words, if by strict application of the 14% formula, 10 Negro teachers are to be assigned to a given school, the court's order is satisfied if 9 or 11 Negro teachers actually are on the faculty. This variance is consistent with the provision for "approximate ratios on this case."

of Appeals for the Eighth Circuit has approved use of such a formula on the ground that it "comports with *Brown*." *Kelley* v. *Altheimer, Arkansas Public School Dist. No. 22*, 378 F. 2d 483, 498 n. 24 (C.A. 8). Compare *Yarbrough* v. *Hulbert-West Memphis School District No. 4*, 380 F. 2d 962, 969 (C.A. 8).

The standard approved by these courts and by the district court in this case is an appropriate and workable means of measuring faculty desegregation under judicial supervision. The more general terms of the *Jefferson* decree articulate the underlying purpose of such an order, but they provide no meaningful guidelines under which a school board can measure its own performance. In this very case, for example, the school board's associate superintendent testified that he could not know when faculty desegregation would be finally accomplished because the *Jefferson* order was "in fairly general terms" and "the objectives of the court order * * * [had] never been laid down in any 'percentage fashion' * * *" (R. 586). He also testified that he did not know when schools will "not be recognizable as for a particular race" because that "would depend on what the Board's definition of that is," and while the subject had often been discussed, neither his superiors nor "other school personnel [officials] * * * in America" had refined the court's "broad definition" (R. 586–587).[5]

In concluding this portion of our argument we

[5] The associate superintendent's full testimony on this subject is quoted in footnote 5 of the majority opinion of the panel below (Pet. No. 798, pp. 57–58).

believe it important to emphasize three points with respect to the mathematical standard fixed by the district court:

First, it is designed as a *remedy for* past racial assignment which, as a result of respondents' deliberate actions, has produced racially identifiable faculties. There is no suggestion in the district court's opinion, nor is there intended to be any in our submission here, that proportional allocation of faculty on the basis of race is a constitutional requirement. We do not, in other words, argue here that racially balanced faculties are constitutionally or legally required. We do, however, contend that where there has been deliberate racial segregation in teacher assignment—whether it be in the context of a full dual system as was prevalent in many Southern States or in a northern school system which, apart from faculty assignment policies, appears to be operated on a unitary nonracial basis—a proper remedy is the reassignment of teachers to eliminate racially disproportionate faculties.

Second, contrary to respondents' contention (Br. in Opp. 12–14), the formula adopted by the district court would not inhibit future hiring by the school board to overcome racial imbalance in the total faculty of the system.[6] The school board's obligation under Judge Johnson's order is to hire and assign

[6] Nor, of course, would it require that teachers of either race be hired. The formula is geared to the racial distribution of incumbent teachers. It is not intended to reflect student population of the school system to require any minimum representation of Negroes or whites in the system.

teachers "so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system" (Pet. No. 798, p. 25). The order goes on to recite that "[a]t present, the ratio is approximately 3 to 2" (*ibid.*), but it does not prohibit changes in that overall ratio. So long as new hiring, assignment and dismissal is conducted within constitutional limits and the mandate of the *Jefferson* decree (which prohibits consideration of race in employment of faculty and staff except for the purpose of counteracting or correcting the effects of past segregation), the school board is free to engage in hiring which may affect the overall ratio. Its only duty is to aim for and achieve (by 1970, see pp. 17–18, *infra*) a ratio at each school which is approximately the same as obtains throughout the system.

Third, since proportional distribution is only a remedy for past conduct which has produced racially identifiable schools, it need not be adhered to once the objective of erasing racial identification has been achieved. It is not, in other words, a standard fixed for perpetuity. After a school board has disestablished its dual system by reorganizing its student assignment program, restructuring faculty allocation and remedying the other vestiges of its former racially segregated operation, the subsequent racial make-up of its faculties is of no more significance than it is with a school district which has never operated a dual system. So long as there is no evidence of deliberate racially discriminatory assignment or employment, racial imbalance or disproportion in faculties would not be governed by the order entered in this case.

II

THE DISTRICT COURT'S STANDARD IS AN APPROPRIATE MEANS OF BRINGING FACULTY ASSIGNMENTS APPROXIMATELY TO WHERE THEY WOULD HAVE BEEN BUT FOR THE RESPONDENTS' UNCONSTITUTIONAL CONDUCT

We have argued above that the district court's order was proper because it provided a judicially enforceable mechanism for erasing the "racial identifiability" which marks the dual school system. Apart, however, from its effect on the "identifiability" of schools to which only or predominantly Negro or white teachers have been consciously assigned, the proportional formula prescribed by the district court is appropriate under the established principle that an equity decree should provide a "disposition * * * most consonant with justice to all interests in retracing the erroneous course that has been taken." *Addison* v. *Holly Hill Co.*, 322 U.S. 607, 619. See also Story, *Equity Jurisprudence* (14 ed.) § 28; Pomeroy, *Equity Jurisprudence* (5th ed.) §§ 60, 67.

1. The gravamen of the respondents' unconstitutional acts was their deliberate assignment of teachers by race on a segregated basis. Had they assigned faculty on nonracial criteria, it is likely that in Montgomery County Negro and white teachers would have been randomly distributed throughout the system.[7]

[7] It is, of course, possible that other criteria, although neutral on their face, would have resulted in a greater share of Negro or white teachers in certain schools. If, for example, proximity of a teacher's residence to his school were a factor, certain schools might have a greater share of white or Negro

Consequently, it is now the district court's duty, in drawing up a desegregation decree, to achieve approximately the random distribution of white and Negro teachers which would have resulted from constitutional policies of teacher assignment.

The formula adopted by Judge Johnson has this effect. To be sure, if the school board today randomly distributed all its teachers among its 52 schools, they would not all have 60 percent white teachers and 40 percent Negro teachers. But, by the laws of probability, a greater number would have substantially that racial proportion and, as to any individual school, that ratio would be the most likely.

The district court's order follows the principles governing equity decrees applied in *United States* v. *Crescent Amusement Co.*, 323 U.S. 173 (which this Court cited in its discussion of remedies in the recent *Green opinion,* 391 U.S. at 438 n. 4). For the language of the *Jefferson decree,* like the language challenged in the *Crescent Amusement* case, "bids fair to call for a retrial * * * any time a citation for contempt is issued." 323 U.S. at 186. As we pointed out at p. 12, *supra,* the school board's officials did not know how they were to comply with it. Here, as in *Crescent Amusement,* the "situation * * * permits of a more selec' treatment" (*ibid.*), and here, as in *Crescent Amusement,* relief must take into account

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teachers. There is no evidence in this record that this was true in Montgomery County and, in any event, we read the district court's order as permitting minor departures for such reasons under the qualifying adverb "substantially."

the fact that "[t]he pattern of past conduct is not easily forsaken" (*ibid.*).[8] For these reasons, the district court properly eschewed a general formulation in favor of a decree with very specific objectives.

Nor does the similarity between this case and *Crescent Amusement* end with the equivalent need for specific relief. Here, as in *Crescent Amusement*, the claim is made that the relief decreed by the court below is excessively harsh and that it casts heavy burdens on the defendant. The answer to that argument was provided in the *Crescent Amusement* opinion, where the Court held that "[t]hose who violate * * * may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience." 323 U.S. at 189.

In fact, the plea of hardship has been made in other similar cases and rejected by the Court of Appeals for the Fifth Circuit. In *United States* v. *Board of Education of City of Bessemer*, 396 F. 2d 44 (C.A. 5), it was asserted that involuntary transfer of teachers to desegregated positions could not be accomplished and that no terminal date should be fixed for total faculty desegregation. As Judge Brown, the author of the *Bessemer* opinion, pointed out in his opinion dissenting from the denial of rehearing *en banc*

[8] Between the entry of the *Jefferson* decree in June 1967 and the February 1968 hearing, more than 75 new teachers were assigned to schools where their race predominated. Of 31 new teachers hired after the September 1967 hearing, only six were assigned to minority-race positions (R. 502–503, Gov. Exs. 2–32).

here, the court in *Bessemer* "did do four things" (Pet. No. 798, p. 76):

> The first was to rule out the voluntary approach. The second was to fix an immediate target date, for the School Board to report specifically what it had done and would do for the school year 1968–69. The third was to fix the date—implicit in *Jefferson*—for full compliance, as the beginning of the school year 1970–71. Fourth, we declared that since Negroes were not to be required to wait until "C-day"—1970–71, to see the evidence of compliance, we sounded in the plainest of words that *specifics* were now the order of the day. Specifics in June-August for the school year 1968–69. More so, specifics for the succeeding year 1969–70, leading to the climax of September 1970.

The circuit-wide requirement of full compliance by September 1970 was announced with due consideration for the claim of administrative hardship. Indeed, on account of difficulties which might arise in immediate implementation of total faculty desegregation requirements, the Fifth Circuit gave school boards an opportunity to achieve the ultimate objective in three stages, permitting partial progress for the fall of 1968 and 1969, and requiring total compliance only as of 1970.[9] The claim of administrative hardship now made by the school board (Br. in Opp. 17) rings particularly hollow in a case containing a finding such as the one made by the district court here (Pet. No. 798, p.

[9] It is not immaterial to note, in this regard, that the *Jefferson* decree was issued in the spring of 1967, and school districts such as respondent's were subject to its faculty provisions before the 1967–68 school year.

17): "The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968–69." Respondents do not cite evidence to challenge this finding; nor did the court below determine that it was erroneous. The few factors enumerated by respondents which relate to where a teacher should be placed (Br. in Opp. 10) do not justify a conclusion of any hardship whatever—much less one which would justify the delay or denial of a constitutional right. If a teacher in a particular school has skills which peculiarly fit the needs or talents of that school, there is, of course, no requirement that he be transferred. The district court's decree requires only that his race be taken into account in determining who else is to be assigned to that school.

2. The original panel of the court of appeals eliminated "the numerical ratios set forth in the district court's order and decree" (Pet. No. 798, p. 63) on the grounds that (1) a school board was carrying out its constitutional obligation if it made "a good faith and effective beginning and a good faith and effective effort to achieve faculty and staff desegregation for the entire system" (Pet. No. 798, p. 62), and (2) "[c]onsideration must be given to the availability of teaching personnel, sound school administrative procedure, and other important factors" (Pet. No. 798, pp. 62–63), and

that therefore "standards fixed by the courts with respect to faculty desegregation cannot be totally inflexible" (Pet. No. 798, p. 60).

The court below thereby misapprehended both the purpose of the court order and its effect. If the history of school desegregation litigation establishes anything, it is surely that reliance on vague standards is inadequate to bring about a realization of the constitutional rights at issue. Good faith is, of course, important. (See this Court's opinion in *Green,* 391 U.S. at 439). But the critical question must be not the state of mind of the school board, but whether the desegregation plan it is implementing "promises realistically to work, and promises realistically to work *now.*" *Ibid.*

The record here demonstrates that general instructions provide no realistic road towards faculty desegregation. Until the district court fixed specific numerical guidelines, the school board had placed only 32 teachers of a total faculty of 1365 in desegregated positions. As Judge Brown noted in his dissenting opinion below, "[s]pecifics are needed" (Pet. No. 798, p. 74), and only specifics will insure that the dual structure of faculty assignments will be eliminated.

The panel of the court below also erred in assuming that the order of the district court was "inflexible" and that it was impossible to take account of factors such as the availability of teachers and school administrative procedures in meeting the ratios fixed by the decree. All that the decree required was that the faculties be reassigned so that the ratios be

"substantially" the same. Minor departures from the overall ratio for sound and legitimate administrative reasons are, of course, permissible and they are contemplated by the court order.

Indeed, sound administration depends in large measure on planning, and one of the principal vices of the decision below is that it creates great uncertainty with respect to what school boards are to do and makes planning difficult. The very same uncertainty which marked the testimony of the board's associate superintendent now affects school districts throughout the states in the Fifth Circuit and produces dissimilar results of the kind referred to by Judge Brown in his dissenting opinion below.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and the numerical ratios in the district court's decree should be reinstated.

Respectfully submitted.

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MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Other Authority:

28 U.S.C. § 1254(1) 2

IN THE

Supreme Court of the United States

October Term, 1968

Nos. 798, 997

UNITED STATES OF AMERICA,

Petitioner,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*,

and

ARLAM CARR, JR., *et al.*,

Petitioners,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS ARLAM CARR, JR., ET AL.

Opinions Below

The opinion and order of the district court of February 24, 1968 (R.[1] 404), is reported at 289 F. Supp. 647 and

[1] References to the record "R." throughout the brief refer to the pagination in the original record which is indicated by appropriate notations throughout the printed Appendix. To expedite filing of the brief and appendix and ready the case for consideration at an earlier date the brief and appendix were printed simultaneously thereby precluding references herein to the appendix pages. However the index to the Appendix includes an index to original page numbers, which, as noted above, appear throughout the appendix on each document.

the supplemental order entered March 2, 1968 (R. 430), is at 289 F. Supp. 657. Another supplemental order of March 2, 1968 (R. 428), is unreported. The majority opinion of August 1, 1968, by the panel of the Court of Appeals (by Circuit Judge Gewin, with District Judge Elliott concurring) is reported at 400 F.2d 1. The dissenting opinion of October 21, 1968, by Judge Thornberry is reported at 402 F.2d 782. The order of the Court of Appeals of November 1, 1968, denying rehearing and rehearing *en banc* by an equally divided court, is at 402 F.2d 784. The opinion dissenting from the denial of rehearing *en banc* (by Chief Judge Brown, with the concurrence of Judges Wisdom, Thornberry, Goldberg and Simpson) is at 402 F.2d 784. Judge Dyer also dissented from the denial of rehearing *en banc* without opinion at 402 F.2d 787.

Prior reported opinions and orders of the district court at earlier stages of the case are reported as follows: (a) July 31, 1964, 232 F. Supp. 705, R. 98; (b) May 18, 1965, 10 Race Rel. L. Rep. 582, R. 191; (c) March 22, 1966, 253 F. Supp. 306, R. 274; (d) August 18, 1966, 11 Race Rel. L. Rep. 1716, R. 285; (e) June 1, 1967, 12 Race Rel. L. Rep. 1200, R. 364.

Jurisdiction

The judgment of the Court of Appeals was entered on August 1, 1968; rehearing was denied November 1, 1968. The petition for certiorari was filed in No. 798 on December 4, 1968; and in No. 997 on January 30, 1969. Certiorari was granted on March 3, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Question Presented

Whether in a school district formerly segregated by law into a dual system of separate white and Negro schools, where only slight desegregation has been achieved despite litigation begun in 1964, and where a trial court determined that to "pass tokenism" it was necessary to define the goal of faculty desegregation as the achievement in each school of a ratio of white to Negro teachers substantially the same as the system-wide ratio, it was error for the Court of Appeals to:

(a) strike down the trial court's numerical ratios and leave the goal of faculty desegregation entirely undefined;

(b) refuse to set a target date for full faculty desegregation;

(c) refuse to require that faculties in new schools be established on a completely desegregated basis.

Constitutional Provisions Involved

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Statement

1. Introduction.

This is a public school desegregation suit presenting issues relating to the obligation of the Montgomery County, Alabama, public school system to desegregate school faculties. The school board appealed seeking reversal of a desegregation order entered February 24, 1968, and amended March 2, 1968, by District Judge Frank M. Johnson, Jr. By a vote of 2-1, a panel of the Court of Appeals

(Circuit Judge Gewin and District Judge Elliott) modified the order and eliminated certain provisions relating to faculty desegregation. Circuit Judge Thornberry dissented from the modifications of the faculty integration order. A petition for rehearing *en banc* was denied by an equally divided vote of 6-6, with one Judge not participating due to illness.

In No. 997, the Negro pupils and parents who commenced the litigation in 1964 seek to reinstate, with some modifications, the district court order regarding faculty. In No. 798 another petition for certiorari seeking essentially similar relief has filed by the United States which has participated in the case throughout by order of the District Court.

2. Proceedings During 1964.

The complaint (R. 1-8), filed by a group of Negro pupils and parents May 11, 1964, alleged that the Montgomery County, Alabama school system was operated on a racially segregated basis. It was alleged that Negro students were assigned to schools with only Negro students and faculties (R. 4). The relief sought included an injunction against segregated faculty assignments (R. 7).

An opinion by the district court July 31, 1964, noted that the system, which embraces the City of Montgomery and surrounding rural areas, served about 25,000 white children and 15,000 Negro children (R. 100). The judge found there was "a dual school system based upon race and color" and that defendants "operate one set of schools to be attended exclusively by Negro students and one set of schools to be attended exclusively by white students" (R. 100). The judge wrote that: "The evidence further reflects that the teachers are assigned according to race; Negro teachers are assigned only to schools attended by Negro students and white teachers are assigned only to schools attended by white

students" (R. 100). The court observed: "Even the substitute teachers' list and attendance records reflect these distinctions based upon race" (R. 101). Finding that ten years had elapsed since *Brown* v. *Board of Education*, 347 U.S. 483 (1954), without any action to desegregate the schools, the court ordered that desegregation begin in September 1964 in grades 1, 10, 11 and 12. But, the court made no order with respect to faculty integration. Thereafter, 29 Negro pupils sought transfers to white schools in September 1964. The school board, using the Alabama School Placement Law, denied the requests of 21 and admitted the remaining 8 Negroes to white schools (R. 112). The court refused to order the admission of the rejected Negro transfer applicants (R. 148).

3. Proceedings During 1965.

On January 15, 1965, the school board filed a proposed desegregation plan as required by the judge (R. 155). The proposed plan made no mention of faculty desegregation and plaintiffs objected on that ground among others (R. 169). On May 18, 1965, the trial judge approved the proposed plan with amendments to require desegregation in grades 1, 2, 9, 10, 11 and 12 in September 1965 (R. 191). Again the court entered no order with respect to faculty desegregation, but did order that a plan for "complete elimination of the biracial school system within a reasonable time" be filed in January 1966.[2]

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[2] In announcing his ruling from the Bench, May 5, 1965, Judge Johnson said: "The defendants should be ordered to file their plan for completion of the desegregated system, including abolition of the dual school or biracial school system, which of course still exists. I am not naive enough to believe that desegregation of certain grades by transfer, such as we are doing here, is full compliance with what the law eventually envisions and requires, but I recognize that it is a transition period, and I think that this is reasonable for the facts in this case and the circumstances existing in this particular school district at this time" (R. 444).

In August 1965 the school board reported that it had accepted 18 of 49 Negro applicants to white schools (R. 195). The plaintiffs again objected to the denial of transfer requests, but the court upheld the board's denials of all except 6 applicants who were ordered admitted (R. 232-234).

4. Proceedings During 1966.

On January 14, 1966, the board filed another desegregation plan making no mention of faculty desegregation (R. 250). Again plaintiffs objected to the lack of faculty desegregation (R. 265) and this time the United States made a similar objection (R. 261). Plaintiffs specifically relied on this Court's faculty desegregation decisions in *Bradley* v. *School Board,* 382 U.S. 103 (Nov. 1965) and *Rogers* v. *Paul,* 382 U.S. 198 (Dec. 1965).

On March 22, 1966, the court entered another desegregation order (R. 274), this time requiring a "freedom of choice" plan generally following guidelines of the Department of Health, Education, and Welfare (HEW) (R. 270). This order required desegregation of all grades except 5 and 6 in September 1966, and for those grades to be desegregated in September 1967. It directed the closing of several small, inadequate all-Negro schools.

For the first time, the March 22, 1966, order also required faculty desegregation. It ruled that race and color were not to be factors in faculty assignments except to eliminate the effects of past discrimination. It ordered that assignments be made so that each school's "faculty . . . is not composed of members of one race." Job applicants were ordered to be informed of the new policy, and the administration was ordered to encourage staff transfers to promote integration. The school administration, in response, made tentative arrangements to place 4 white teachers in black

schools and 4 black teachers in white schools (R. 455). However, after these plans were made, the trial judge, on his own motion on August 18, 1966, rescinded the requirement and postponed faculty integration another year (R. 285). The judge relied on a Fifth Circuit opinion which ordered faculty integration for Mobile, Alabama to begin in 1967.[3]

5. Proceedings During 1967.

On April 11, 1967, plaintiffs moved for modification of the desegregation plan to conform to the circuit-wide requirements of *United States* v. *Jefferson County Board of Education,* 372 F.2d 836 (5th Cir. 1966), *aff'd en banc,* 380 F.2d 385 (5th Cir. 1957), *cert. denied,* 389 U.S. 840 (1967). Judge Johnson ordered the board to show cause why it should not adopt a plan to conform to *Jefferson, supra,* and to the plan ordered by a three-judge court for 99 Alabama counties in *Lee* v. *Macon County Board of Education,* 267 F. Supp. 458 (M.D. Ala. 1967), *aff'd sub nom. Wallace* v. *United States,* 389 U.S. 215 (1967).[4]

On June 1, 1967, the court entered an order conformable to *Jefferson, supra,* and *Lee, supra* (R. 364). The provision for faculty desegregation, which is quoted in full in the

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[3] *Davis* v. *Board of School Commissioners of Mobile,* 364 F.2d 896 (5th Cir., 1966).

[4] The *Lee* opinion recites in detail the background of official resistance by the Governor of Alabama and state education officials to prevent public school desegregation in the State. The three-judge court found that the desegregation efforts of Negroes in Alabama "have met the relentless opposition of these defendant state officials" (267 F. Supp. at 465; R. 318). The opinion recites in detail one series of episodes in August 1966 when the State Superintendent of Education and Governor George C. Wallace worked to prevent faculty desegregation in Tuscaloosa County (267 F. Supp. at 469). The court found that these "state officials also made it clear that similar measures would be taken in other communities if Negro teachers were assigned to teach white students" (*id.*).

footnote below,[5] adopted the objective that "the pattern of teacher assignment to any particular school shall not be

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[5] "VI

"FACULTY AND STAFF

"A. *Faculty Employment and Assignment.* Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion or dismissal of teachers and other professional staff members, including student teachers, except that race will be taken into account for the purpose of counteracting or correcting the effect of the past segregated assignment of teachers in the dual system. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take positive and affirmative steps to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year, notwithstanding that teacher contracts for the 1967-68 or 1968-69 school year have already been signed and approved. The objective of the school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

"B. *Dismissals.* Teachers and other professional staff members will not be discriminatorily assigneg, dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Court, and copies served upon opposing counsel

identifiable as tailored for a heavy concentration of either Negro or white pupils in the school" (R. 370).

On August 17, 1967, the United States filed a motion to require further faculty desegregation in view of the fact that the school board planned to assign only 5 white teachers of 804 to two Negro high schools and 5 Negro teachers out of 554 to two predominantly white high schools (R. 376). The plaintiffs joined in the motion (R. 379), and the court held an evidentiary hearing September 5, 1967.

School Superintendent McKee testified that it was decided to limit faculty desegregation at the beginning to high schools because he anticipated less objection since one teacher would not have the pupils for as much of the day in high school classes (R. 459-460). He also decided to integrate faculties only in schools within the city limits because of the need for close supervision and special protection which was more difficult in sparsely settled areas of the county (R. 461). The superintendent said he was having some difficulty finding white teachers who would agree to assignments in Negro schools, although there was no difficulty finding Negroes willing to teach in white schools (R. 466, 469, 470). The superintendent had engaged 12 or

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within five (5) days after such dismissal, demotion, etc., is proposed.

"C. *Notice to New Staff Members.* In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially desegregated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

"D. *Encouragement of Voluntary Faculty Transfer.* The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred."

13 white teachers for Negro schools, but only 5 of them actually finally accepted the assignment (R. 468). All 5 Negroes initially picked for white schools actually undertook such assignments (R. 468-469). Mr. McKee indicated that he had not assigned more Negro teachers, even though they were available, because he had not been able to get more whites to volunteer for assignments to Negro schools (R. 469), and he wanted to keep the number of Negroes and whites in balance (R. 481). The annual faculty turnover or replacement rate in Montgomery is about 10% of the total staff (R. 478).

At the end of the hearing the court heard arguments, but took no action to make a ruling to affect the 1967-68 school year. The matter was kept under advisement without action by the court. During argument the judge made it plain that he had little "sympathy" with the request for relief at that time (R. 484).

6. Proceedings During 1968.

a. *In the District Court.* On February 1, 1968, the board filed a further pleading asserting it had 32 faculty employees teaching in schools predominantly of the other race, and that it planned further efforts for the coming year. The United States filed a motion (R. 389), joined by the private plaintiffs (R. 394), seeking further relief on the faculty question as well as relief on several other issues affecting desegregation. The court heard evidence February 9, 1968 (R. 495-694).

Superintendent McKee and Associate Superintendent Garrett testified that they had decided that in September 1968 they would assign Negro teachers to all of the white schools at once in "one fell swoop" (R. 556, 579). Mr. Garrett described the plans for faculty desegregation in the following testimony:

Q. How many teachers do you estimate you will have in minority situations this coming year? A. Well, we have about thirty-five now. We are going to attempt—our plan is to try to get at least one into every junior high and every elementary, and then start—once we accomplish that, start around with the second one and the third one and so on, rather than to have three in one school and none in another.

Q. Well based on your— A. Roughly speaking, a minimum or—with thirty-five already there, we have fifty schools or thereabouts; I would say about a hundred or better.

Q. Based on your— A. I think that is practical; I believe we can accomplish that (R. 584).

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The Court: My understanding, now, you are going to have this next year teachers of the minority race in every school in your system?

Witness: As far as humanly possible.

The Court: And how many do you expect to have in your—in your elementary schools, a minimum per school?

Witness: Two, at least.

The Court: And how many in your junior high, your minimum?

Witness: Two; maybe more.

The Court: All right.

Witness: Depending on what we come—

The Court: Now, let's go to percentages; what percentage do you expect to have in your high schools?

Witness: I just don't know. We haven't actually discussed that up to this point. I—I couldn't say.

The Court: Well, your race—your student population is sixty-forty?

Witness: Yes, sir.

The Court: Ultimately, that will be your optimum if you are going to eliminate the racial characteristics of your school through faculty—

Witnes: (Nodded to indicate affirmative reply.)

The Court: —wouldn't it? It would have to be. (R. 598-599.)

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Q. Mr. Garrett, I believe you testified when I was examining you that you were going to have at least—at least one in each school, or am I wrong on that? A. I said we would try to start with one in every elementary school and then come back around with two, and if we were successful, maybe three; I don't have any preconceived notion about maximums, but I would rather have these distributed rather than to have three, say, in one school and none in another (R. 600).

Associate Superintendent Garrett, who was in charge of faculty assignments, testified that he did not know the goal of the court's prior faculty desegregation orders:

Q. As part of your duties, have you been given the responsibility, primarily, of carrying out faculty desegregation? A. Well, the superintendent has delegated the recommending of the best faculty members that I can come by, and desegregation is a large—our faculty is a large part of my responsibilities; not the only one, but that has been discussed and—with the Board and with the superintendent, and we have a plan to accomplish this, have been working on it all year.

Q. Well, under your plan, when do you estimate that faculty desegregation will be finally accomplished in terms of the objective of the court order removing—

A. Well, now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of. It says that you will have reasonable desegregation of faculty and that you will strive toward having each faculty not recognizable as being staffed for a particular race. That is what I get out of it.

Q. Well, let— A. So I—I can't—this court order is in fairly general terms; I can't answer that question.

Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished? A. Well, that would depend on what the Board's definition of that is, the court's definition of that.

Q. Do you have a definition of that? A. Not at this point; we have discussed that many times, and I do not have a definition of—of what that would mean.

Q. No one has told you, given you a definition in terms of mechanics, in terms of numbers, none of your superiors? A. No, as far as I know, no other school personnel man in America has. I have talked to many of them. What we are striving to do is to make progress and keep going and hope that somewhere along the line we will have achieved the—what the court has in mind. But if you will look at that court order, you will see it doesn't lay down the precise terms exactly what that means; it is a broad definition.

(R. 585-587)

In a memorandum opinion filed February 24, 1968, the court made findings that there were still about 15,000 Negro children and 25,000 white children in the system; that only 550 Negro children were attending traditionally white schools and no whites were in the Negro schools under the

freedom of choice plan; that 32 classroom teachers were teaching pupils in schools predominantly of the opposite race; that the system employed about 550 Negro teachers and 815 white teachers; that most faculty desegregation was in the high schools and there was little, if any, faculty desegregation in the county's rural schools (R. 406). The court also noted that the vast majority of teachers newly hired after the June 1, 1967, faculty desegregation order, were still assigned to schools where their race was in the majority; that no Negro has yet been a substitute in a white school; that during a semester where white substitute teachers were employed 2,000 times, only 33 white substitutes were employed in Negro schools; that there was "no adequate program for the assignment of student teachers on a desegregated basis"; and that there was no faculty desegregation in night schools (R. 406-407). The court concluded: "The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year 1968-69" (R. 407).

Judge Johnson, during the hearing, in a colloquy with Superintendent McKee, expressed the position, "I have gone along with this transition business for a good long while, but we have passed the transition period" (R. 544). Finding that the board had "failed to discharge the affirmative duty . . . to eliminate the . . . dual school system," the court held it was "necessary and entirely appropriate to establish now more specific requirements governing minimum amounts of progress in the future . . ." (R. 409).

The order of February 24, 1968 (R. 413-414), as amended (R. 429), supplemented the desegregation plan approved

June 1, 1967. The order, which is quoted below,[6] defined the objective of eliminating the racial identifiability of school

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[6] "I

"FACULTY AND STAFF

"A. *Statement of Objective.* In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

"The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

"B. *Schedule for Faculty Desegregation.* 1. 1968-69. At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

"At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for the time being, other specific faculty and staff desegregation requirements for future years.

"C. *Means of Accomplishment.* If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filing vacancies, then it will do so by the assignment and transfer of teachers from one school to another.

"D. *Substitute Teachers.* Commencing in September, 1968, with the 1968-69 school year, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

"Commencing with the 1968-69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only at predominantly white schools or only at predominantly Negro schools.

"E. *Student Teachers.* Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro

faculties as requiring the assignment of faculty such that the ratio of Negro to white faculty members in each school would be substantially the same throughout the system. For the year 1968-69 the court ordered at least one minority race (white or black) teacher in each school with less than 12 teachers, and in larger schools at least one minority race teacher of every six teachers. The court reserved judgment on detailed requirements for future years. The court also ordered that substitute teachers, student teachers, and night school teachers should be assigned so that there was substantially the same racial ratio in each school.

On the school board's application for a stay pending appeal, a part of the faculty desegregation order was stayed by Judge Johnson.

b. *Action of the Court of Appeals.* On August 1, 1968, the Court of Appeals, by a divided vote, modified the faculty desegregation order.[7] The court struck from the decree all numerical ratios except the interim 1968-69 goal—a five-to-one ratio in large schools and a more liberal ratio in smaller schools—which was modified to read "*substantially* or *approximately* five to one" (emphasis added). The court also rejected the plaintiffs' argument that the trial court should have set a target date for full integration and should have required immediate total desegregation of faculties in several new schools to be opened in 1968.

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student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

"F. *Night Schools.* Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program."

[7] Trial court rulings pertaining to special efforts to desegregate a new high school were affirmed on appeal.

Judge Thornberry dissented, finding no basis in the record or the prior decisions for modifying the trial judge's experiment in establishing numerical ratios for faculty desegregation. Chief Judge Brown's dissent from the denial of rehearing *en banc* (joined in by Judges Wisdom, Thornberry, Goldberg and Simpson) argued that there was a need for specific numerical targets for faculty desegregation plans to define the goal of schools unidentifiable as to race, as well as a need for specific target dates for compliance.

Summary of Argument

This case involves issues of considerable practical importance to achieving transition from a state-imposed dual, segregated school system to a unitary, non-racial system as required by *Brown* v. *Board of Education*, 347 U.S. 483 (1954) (*Brown I*), 349 U.S. 294 (1955) (*Brown II*); and *Green* v. *County School Board*, 391 U.S. 430 (1968). The court below struck down the district court's attempt to define in meaningful terms the goal of *faculty* desegregation, an essential aspect of the over-all goal of a desegregated school system. See *Bradley* v. *School Board*, 382 U.S. 103 (1965); *Rogers* v. *Paul*, 382 U.S. 198 (1965). The district judge had ruled that in each school the ratio of white to Negro faculty members should be substantially the same as the ratio throughout the system which he found was at the time approximately 3 to 2.[8] By striking such "numerical ratios," the court below rejected this goal and left the faculty desegregation objective so vaguely defined as to impair the ability of district courts to assure substantial progress. Petitioners submit that the refusal to give meaningful definition to the objective of faculty desegregation, especially where the trial court found

[8] Comparable rulings were made with regard to night schools, and to student and substitute teachers. See n. 10, pp. 20-21, *infra*.

such definition necessary in order to avoid further delay by school authorities, is inconsistent with this Court's demand in *Green* v. *County School Board, supra,* 391 U.S. at 439, for desegregation plans that promise "realistically to work *now.*"

In addition to striking down the district court's attempt to define the goal of faculty desegregation in terms of a system-wide racial ratio, the court below made three significant subsidiary rulings. It failed, as did the trial court (except in the case of night schools, and student and substitute teachers), to set any target date for the achievement of full faculty desegregation. (After the trial court decision, but prior to the Court of Appeals decision, another panel of the Fifth Circuit set September 1970 as "C" —for "compliance"—day for full faculty desegregation. *United States* v. *Board of Education of the City of Bessemer,* 396 F.2d 44, 52 (5th Cir. 1968).) The court below also amended the trial judge's minimum interim requirement that schools with 12 or more faculty members begin the school year 1968-69 with at least one of every six faculty members of a race different from the majority, by adding the qualifying phrases "approximately" and "substantially." Finally, the court below upheld the trial court's failure to require that faculties in new schools be established on a completely desegregated basis.

Petitioners contend that under *Green* v. *County School Board, supra,* full faculty desegregation should be implemented *immediately* in all schools throughout the system. Therefore, while we believe that the court below erred in modifying the district's court's specific minimum *interim* goals, we do not consider it necessary to argue that point here. Petitioners further contend that the courts below erred in not requiring that faculties in *new* schools be established on a completely desegregated basis.

The issues in this case should be viewed in the practical context of Montgomery County, Alabama. When this law suit was filed in May 1964, ten years after *Brown I*, the public schools were still totally segregated. No progress had been made voluntarily. In Montgomery, as was true in a Virginia county brought before this Court last term: "Racial identification of the system's schools was complete, extending not just to the composition of student bodies . . . but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities." *Green* v. *County School Board*, 391 U.S. 430, 435 (1968). As this Court stated in *Green*, "[t]he transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about . . ." (391 U.S. at 436). In Montgomery County, Alabama it became the task of District Judge Frank M. Johnson, Jr. to supervise that transition.

The very same month this case was filed, this Court declared in *Griffin* v. *School Board*, 377 U.S. 218, 234 (1964) that "the time for mere 'deliberate speed' has run out. . . ." Yet, for four more years the District Judge patiently permitted the respondent school board to delay desegregation with a variety of transitional devices until he finally decided "We have reached the point where we must pass 'tokenism.'" (R. 431). The beginning of faculty desegregation had been repeatedly postponed until September 1967, although petitioners sought such relief from the outset of the case. Even after this Court ruled in late 1965 that faculty segregation must be considered in connection with school desegregation plans, in *Bradley* v. *School Board*, 382 U.S. 103 (1965), and *Rogers* v. *Paul*, 382 U.S. 198 (1965), Judge Johnson felt constrained by a ruling of the Fifth Circuit involving Mobile, Alabama, to delay faculty integration in Montgomery County until 1967 (R. 285). Finally, after four years of litigation, at a 1968 hearing, Judge

Johnson warned the school officials that: "I have gone along with this transition business for a good long while, but we have passed the transition period" (R. 544). In his decision rendered February 24, 1968, amended March 2, 1968, Judge Johnson made findings regarding the inadequacy of steps taken by the school officials involved toward faculty desegregation, held that they had failed to eliminate the dual school system and, indeed, had acted to perpetuate this system in the construction and location of new schools.[9] Petitioners believe that the need for specific directives defining the objective of faculty desegregation is evident from the record in this case, as well as from the long history of delay by school boards throughout the South in implementing school desegregation.

ARGUMENT

I.

The District Court Ruled Correctly in Defining the Goal of Faculty Desegregation as the Achievement in Each School of a Ratio of White to Negro Teachers Substantially the Same as the System-Wide Ratio.

District Judge Frank M. Johnson, Jr. ruled that in achieving the objective of faculty desegregation, the school board should "be guided by the ratio of Negro to white faculty members in the school system as a whole," and should hire and assign faculty members "so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system," which he found was at the time approximately 3 to 2. He made comparable rulings regarding substitute teachers, student teachers and night school faculty members.[10]

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[9] See opinion of the district court at 289 F. Supp. 647, 649-52.

[10] Order of February 24, 1968 (R. 413-414), as amended (R. 429). The relevant portions of the court's order regarding student and substitute teachers and night school faculty members follow:

The court below eliminated this attempt to define further the objective of faculty desegregation outlined in *United States* v. *Jefferson County Bd. of Educ.*, 372 F.2d 836 (5th Cir. 1966) (*Jefferson I*), *aff'd en banc*, 380 F.2d 385 (5th Cir. 1967) (*Jefferson II*), *cert. denied sub nom. Caddo Parish School Bd.* v. *United States*, 389 U.S. 840 (1967), as requiring that "the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the schools" (380 F.2d at 394).

D. *Substitute Teachers.* Commencing in September, 1968, with the 1968-69 school year, the ratio of the numbers of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester. . . .

E. *Student Teachers.* Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

F. *Night Schools.* Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program.

The district court specifically found that:

> The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968-69. (289 F. Supp. at 6.9)

Respondents apparently have no specific objection to the provisions regarding substitute and student teachers, and night school faculty members, beyond their general objection to all mathematical ratios. Our discussion will therefore focus generally on the issue of the propriety of the district court's use of racial ratios, without any attempt to discuss separately regular faculty members, night school faculty members, student teachers and substitute teachers, since we believe no significantly different questions are involved in the use of the ratio formula in these different categories.

Petitioners contend that the district court's approximate proportional formula is the appropriate standard for measuring whether faculty segregation has been disestablished. Certainly this is true where, as here, the trial court finds that specific directives are necessary in order to accomplish desegregation, and that there are no significant administrative barriers to implementation of the formula.

At an earlier stage (in the June 1, 1967 order) Judge Johnson had defined the goal more generally, in language patterned on *Jefferson, supra.*

> The objective of the school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will be, insofar as administratively feasible, distributed evenly among the various schools of the system. (R. 370)

This identical language was implicitly approved by this Court in *Wallace* v. *United States,* 389 U.S. 215 (1967), affirming per curiam *Lee* v. *Macon County Board of Education,* 267 F. Supp. 458, 489 (M.D. Ala. 1967). It was after this Court's action in *Wallace, supra,* on December 4, 1967 that Judge Johnson entered the more specific order requiring that the white-Negro faculty ratio in each school be substantially the same as the system-wide ratio. For this relatively precise goal the Court of Appeals substituted only vague generalities:

> There must be a good faith and effective beginning and a good faith and effective effort to achieve faculty and staff desegregation for the entire system. . . .

> It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance . . . They [school boards] have the responsibility and should exercise the ingenuity to achieve a proper racial balance (400 F.2d at 9.)

A failure to give any more meaningful definition to the goal of faculty desegregation will leave school boards and trial judges confused as to the ultimate goal to be achieved, and justify those officials who resist desegregation in construing the goal as requiring no more than tokenism. This is illustrated by the record in this case. As the dissenting opinion to the 5th Circuit denial of rehearing *en banc* pointed out:

> Superintendent Garrett explicitly states that he does not even know what the objectives of the earlier District Court order are, when faculty desegregation will be complete, and that he and the Board have been unable to arrive at a workable definition of the model decree's standard of a "faculty not recognizable as being staffed for a particular race."
>
> Specifics are needed. Specifics are needed by the school administrators. Specifics are needed by the Negroes who have waited these 14 years for "a bona fide unitary system where schools are not white schools or Negro schools—just schools"—and who must now wait for an undefined time for the tell-tale mark of segregated faculties to pass away. Specifics are needed by children, Negro and white alike, who are entitled to witness, feel, and participate in the continuing lesson of a constitutional order that is color free.[11] (402 F.2d at 785)

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[11] Even the court below noted that the testimony of school officials demonstrated the need for specific directives. At the hearing before the district court, Associate Superintendent W. S. Garrett,

In *Green* v. *County School Board*, 391 U.S. 430 (1968), this Court placed new emphasis on the end result of any desegregation plan. Yet the decision below defines no ascertainable goal toward which progress can be measured now or later. As the dissenting opinion of the Fifth Circuit denial of rehearing *en banc* points out:

> Loath as Judges are to articulate constitutional goals or actions, in the oft-disparaged mechanical terms of arithmetic, this is an area where it is not the spirit, but the bodies which count. Any less inevitably leaves performance to good faith. Good faith is, of course, needed. But good faith is not, and cannot be, the standard. Now, and each term, each school year it comes down to figures. The result is in figures. If the result is satisfactory it is because of numbers, not the effort or subjective motivation. If the result is unsatisfactory it is likewise because of numbers. The numbers—i.e. the numerical percentage ratios—need to be fixed. Once fixed, the Court can always determine whether a good faith effort of compliance has been made. But good faith there is relevant to compliance, not as an element in fixing the standard. (402 F.2d at 786)

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asked when he estimated that faculty desegregation would be accomplished, testified:

> A. Well, now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of.
>
> • • •
>
> A. . . . I can't—this court order is in fairly general terms; I can't answer that question.
>
> Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished?
>
> A. Well, that would depend on what the Board's definition of that is, of the court's definition of that (R. 586).

Further, *Green* stressed the need to end school segregation *now*. Failure to adopt specific directives will, as argued above, only encourage delay that *Green* said could no longer be tolerated.

Petitioners contend that not only are specific directives necessary if the goal of faculty desegregation is to be achieved, but that the directives laid down by the district judge were the proper directives. The court below expressed distaste for stating the objective of faculty desegregation in mathematical ratios, but it suggested no other formulation. Nor have respondents, at any state in these proceedings, suggested any formulation that would require more than token desegregation. We submit that it is difficult if not impossible to suggest another formulation equally compatible with the constitutional command to eliminate the effects of school segregation formerly established by law, and to create in its place a unitary, non-racial system. *Brown* v. *Board of Education*, 347 U.S. 483 (1954) (*Brown I*), 349 U.S. 294 (1955) (*Brown II*); *Green* v. *County School Board*, 391 U.S. 430 (1968).

In ruling that the ratio of white to Negro faculty members in each school ought to approximate the system-wide white-Negro faculty member ratio, the district judge merely required what would presumably have resulted had teachers been assigned in the past on a non-racial, random basis. As pointed out by Judge Michie in *Kier* v. *County School Board*, 249 F. Supp. 239, 248 (W.D. Va. 1966), in imposing a similar formula,

> . . . [T]he order of the court is merely intended to give redress for former faculty segregation on the premise that, had there been no discrimination to begin with, the Negro teachers employed by the county would have been as evenly distributed throughout the

various schools in the system as, for want of a better analogy, those teachers with blue eyes or cleft chins.

Further, a requirement that the faculty in each school reflect the racial composition of the faculty of the entire system is the only practical way to ensure that "the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school." *United States* v. *Jefferson County Bd. of Educ., supra,* 380 F.2d at 394; *Lee* v. *Macon County Bd. of Educ.,* 267 F. Supp. 458, 489 (M.D. Ala.), *aff'd sub nom Wallace* v. *United States,* 389 U.S. 215 (1967). Indeed as we read it, the order approved by this Court in Wallace (quoted *supra* at p. 22), covering 99 Alabama counties, calls for a faculty desegregation plan where teachers of differing races and qualifications are "evenly distributed" among the various schools of a system. The order involved here merely defines that goal more precisely. It is only if the "identifiability" of faculties in individual schools is eliminated that a system based on freedom of choice can work to produce desegregation of student bodies as required by *Green* v. *County School Board,* 391 U.S. 430 (1968), since a faculty tailored for one race or another is obviously a significant choice-influencing factor. See *Lee* v. *Macon County,* 267 F. Supp. 458, 479 (1967).

Significantly, the action of the Fifth Circuit is in conflict with decisions in four other circuits approving faculty desegregation orders requiring that teachers of both races be distributed approximately evenly throughout the systems. See *Dowell* v. *School Board of Oklahoma City,* 244 F. Supp. 971, 978 (W.D. Okla. 1965), *aff'd,* 375 F.2d 158, 164, 167 (10th Cir. 1967), *cert. denied,* 387 U.S. 931; *Coppedge* v. *Franklin County Board of Education,* 273 F. Supp. 289, 300 (E.D. N.C. 1967), *aff'd* 394 F.2d 410 (4th Cir. 1968); *United States* v. *School District 151 of Cook County, Illinois,* 286 F. Supp. 786, 798, 800 (N.D. Ill. 1968), *aff'd,* 404 F.2d 1125 (7th Cir. 1968). The Eighth Circuit has said that the use of such a formula "comports with *Brown*" in *Kelley* v. *Altheimer School District,* 378 F.2d 483, 498, n. 24 (8th Cir. 1967); *cf. Yarbrough* v. *Hulbert-West Memphis School District,* 380 F.2d 962, 968-969 (8th Cir. 1967).

It is important to emphasize that the percentage goals adopted by the district court were sufficiently flexible to accommodate administrative difficulties. The goal was not an exact percentage but "substantially the same" ratio. Petitioners would have no objection to defining more precisely the area of leeway, as for example was done in *Dowell, supra,* where the court allowed a ten percent margin for individual school variations (375 F.2d at 164).

It is notable that the percentage formula was first proposed by an expert panel of educators and not by lawyers. *Dowell* was the first reported case in which a district court required that the percentage of Negro teachers in each school should approximate their percentage in the entire system. The court in *Dowell* made its ruling for the Oklahoma City system on the recommendations of a distinguished panel of educational administrators who devised the integration plan for that city at the court's invitation.

In concluding, it is important to note what the district court's formula does *not* do. It does not impose a requirement that the ratio of white to Negro faculty members in each school and in the entire system remain the same in the future as it is at present. It is therefore *not* necessary, under this formula, that any *particular* quota or percentage of Negroes (or whites) be on the faculty in each school. It is only necessary that the percentage in

each school approximate the percentage in the system as a whole, whatever that may be.

Nor does the district court's formula import any permanent notion of race or ratio consciousness into the school system. As the Court in *Kier* v. *County School Board,* 249 F. Supp. 239, 248 (W.D. Va. 1966) stated,

> . . . the order of the court to be entered here envisions no . . . permanent race consciousness. It is merely intended to give redress for former faculty segregation. . . .

The fact that racial ratios may be necessary and appropriate as remedial measures to disestablish a system formerly segregated by law does not mean that once such disestablishment has been achieved such ratios would be either necessary or appropriate. Finally, approval of the use of such percentages as remedial measures to assure the "disestablishment of state-established segregated school systems," *Raney* v. *Board of Education,* 391 U.S. 443, 449 (1968), offends no constitutional rule against consideration of racial factors. *United States* v. *Jefferson County Board of Education,* 372 F.2d 836, 876 (5th Cir. 1966), adopted *en banc,* 380 F.2d 385, *cert. denied,* 389 U.S. 840 (1967); *Wanner* v. *County School Board of Arlington County,* 357 F.2d 452 (4th Cir. 1966).

II.

Full Faculty Desegregation Should Be Immediately Implemented.

Neither the district court nor the Court of Appeals established any deadline for achieving full desegregation of the regular school faculties. And they refused to order that faculties in new schools be established from the beginning on a desegregated basis.

Petitioners contend that it is essential that some date for compliance with the goal of faculty desegregation be clearly established if defining the goal is to ensure progress toward it. To tell school boards that ultimately they must establish a certain Negro-white faculty ratio but leave them free to determine the pace at which to approach that ratio would be meaningless. Certainly in the Fifth Circuit, in light of *United States* v. *Board of Educ. of Bessemer*, 396 F.2d 44 (5th Cir. 1968), a case decided after the district court's ruling, the date for ultimate compliance can be no later than the beginning of school year 1970-71. See also *United States* v. *Greenwood Municipal Separate School District* (5th Cir. No. 25714, Feb. 4, 1969). Indeed, respondents concede as much in their Brief in Opposition to the Petition for Certiorari, No. 798.

However, petitioners contend that under this Court's decision in *Green* v. *County School Board*, 391 U.S. 430, 438, 439 (1968), compliance with the goal of full faculty desegregation should be immediately required.[12] In *Green*,

[12] Petitioners recognize that there may be instances, perhaps in small schools, in which immediate implementation of the goal of faculty desegregation would not be practicable. Exceptions from the general rule could, of course, be made in such cases. But a heavy burden should be on the school officials to make a showing in each case that such an exception is necessary.

this Court ruled that in effecting the transition to a unitary, non-racial system, "delays are no longer tolerable," and "the burden on a school board is to come forward with a plan that promises realistically to work, and promises realistically to work *now*." And *Green* made no distinction between faculty and student desegregation. There is no indication in this record that compliance by the opening of school year 1969-70 would not be feasible. The district court failed to set a timetable on the basis of a philosophy of "gradualism" completely inconsistent with this Court's subsequent decision in *Green, supra*.[13] Since *Green*, the Fifth Circuit has held that schools must complete full conversion to a unitary, non-racial system by the beginning of school year 1969-70 at the latest, and has specifically insisted that plans provide for the elimination of all-Negro schools, as well as predominantly white schools, in which only a small fraction of Negroes are enrolled. *Adams* v. *Mathews*, 403 F.2d 181 (5th Cir. 1968); *United States* v. *Greenwood Municipal Separate School District* (5th Cir. No. 25714, February 4, 1969); *Henry* v. *Clarksdale Municipal School District* (5th Cir. No. 23255, March 6, 1969). Since the alleged difficulties in desegregating faculties have been primarily related to the segregated nature of student bodies, the Fifth Circuit's implementation of *Green's* required transition to "a system without a 'white' school and a 'Negro' school, but just schools" (391 U.S. at 442) ought to facilitate faculty desegregation.[14]

[13] "[G]radualism has been found to work quite successfully in the past in this type case and particularly with the Montgomery County Board of Education, and gradualism is contemplated by this Court in accomplishing this 'ultimate objective.'" (289 F. Supp. at 658).

[14] The district court had ruled that schools with 12 or more faculty members begin the school year 1968-69 with at least one of every six faculty members of a race different from the majority. The Court of Appeals modified this in holding that "because of

Whatever the merits of requiring immediate compliance with the goal of faculty desegregation in *all* schools, there can be no question that the faculties of *new* schools ought be established on a completely desegregated basis. However, the court below upheld the district court's failure to require full faculty desegregation immediately in such schools. Neither court gave any adequate explanation. The Court of Appeals ruling was on the grounds that the district court had spoken approvingly of permitting the school board "to achieve the ultimate objective of a completely desegregated school system *gradually*. . . ." (400 F.2d at 9-10). But the district court discussed the benefits of gradualism in explaining its failure to set a deadline for faculty desegregation throughout the school system, not in the particular context of the new schools. Most traditional arguments for gradualism are inapplicable where new schools are concerned. No problems of transferring faculty members out of such schools are presented. Problems involved in creating new faculties are comparable to those of filling vacancies; courts traditionally have recognized the obligation to fill vacancies on a non-racial basis. Moreover, administrative problems are magnified by al-

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the difficulties inherent in achieving a precise five-to-one ratio, this part of the district court's order should be interpreted to mean *substantially or approximately* five to one" (400 F.2d at 8). Petitioners contend that this modification was clearly erroneous. While it is appropriate that the ultimate objective be defined as an approximate requirement, there is no reason that interim goals should not express fixed minimal requirements. Such requirements do not pose insuperable administrative problems by their rigidity because nothing prohibits having *more than* one of every six teachers of a minority race. And they may be necessary, as the district court apparently felt they were, to prod reluctant officials into action. However, since school year 1968-69 has by now almost come to a close, and since as we read *Green* v. *County School Board* (text, *supra*, pp. 29-30), full faculty desegregation is required *now*, the issue of interim targets for faculty desegregation no longer seems relevant.

lowing establishment of an essentially all-white (or all-Negro) faculty since school officials will be faced with the problem in future years of transferring out white (or Negro) teachers.[15]

In any event, since the district court found specifically that the manner in which the school board had constructed these schools was designed to perpetuate, and had the effect of perpetuating, the dual school system (289 F. Supp. at 652), full faculty desegregation should have been required immediately in these schools in order to counter school officials' attempts to establish the new schools as segregated institutions.

[15] Significantly, the 1968-69 figures show that in the three new schools named in the district court opinion—Crump, Jefferson Davis and Southlawn—there were as of September 15, 1968, a total of 9 Negro teachers assigned as against 48 white teachers. The individual ratios were, respectively, 1:10, 7:29 and 1:9. (Brief of Respondents in Opposition to Petition for Certiorari, No. 798; Appendix A.)

CONCLUSION

The trial court ruled correctly in defining the goal of faculty desegregation as the achievement in each school in the system of a ratio of white to Negro teachers substantially the same as the system-wide ratio. Under *Green* v. *County Board of Education*, 391 U.S. 430 (1968), compliance with this goal should be immediately required. Accordingly, the judgment below should be reversed.

Respectfully submitted,

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Nos. 798 and 997

In The Supreme Court of The United States

October Term, 1968

No. 798

United States of America, petitioner

v.

Montgomery County Board of Education, et al., respondents

No. 997

Arlam Carr, Jr., et al.

v.

Montgomery County Board of Education, et al.

On writs of certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

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Nos. 798 AND 997

In The Supreme Court of The United States

OCTOBER TERM, 1968

No. 798

UNITED STATES OF AMERICA, PETITIONER

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL., RESPONDENTS

No. 997

ARLAM CARR, JR., ET AL.

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

OPINIONS BELOW

The opinion of the District Court (R. 489) as modified and amended (R. 524) is reported at 289 F. Supp. 647. The opinion of the Court of Appeals (R. 750) is reported at 400 F. 2d 1. The orders of the Court of Appeals denying rehearing (R. 776), denying rehearing en banc (R. 776) and dissenting opinions (R. 771 and 776) are reported at 402 F. 2d 782, 784.

JURISDICTION

The jurisdictional requisites are set forth in the Briefs of Petitioners.

QUESTION PRESENTED

Must a school board, which has adopted immediate plans to completely desegregate its faculty, which has already made extensive numerical progress in faculty desegregation and which has consistently demonstrated meaningful good faith compliance with constitutional mandates to achieve a racially nondiscriminatory school system, be forced to assign faculty members according to a mathematical ratio fixed by the racial balance of the entire faculty?

STATEMENT

A. *IMMEDIATE PLAN TO COMPLETELY DESEGREGATE FACULTY.* The majority decision of the Court of Appeals, in affirming with modification the decision of the District Court, reiterated the school board's duty to desegregate its faculty and staff. The Court of Appeals stated that: "School boards must not use excuses to delay the achievement of full faculty and staff desegregation." (R. 766, 400 F. 2d 1 at p. 9).

The Court of Appeals made the following two modifications of the District Court's order:

First, the Court of Appeals ruled that the Montgomery County Board of Education, as a beginning in the 1968-1969 school year should have a ratio of at least substantially or approximately one to five faculty and staff members being of a different race from the majority. The District Court in the order of February 24, 1968, as amended on March 2, 1968, had ordered a strict one of every six faculty and staff members to

be of a race different from the majority (R. 503, 289 F. Supp. 647 at p. 654). The Court of Appeals in making this modification recognized "the difficulties inherent in achieving a precise five-to-one ratio." (R. 764, 400 F. 2d 1 at p. 8).

Secondly, the Court of Appeals held that: "Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective." (R. 765, 400 F. 2d 1 at p. 8).

The District Court had ordered such a three to two ratio as the ultimate objective in faculty desegregation (R. 503, 289 F. Supp. 647 at p. 658).

The Montgomery County Board of Education fully recognizes its constitutional duty to desegregate the faculty throughout this system to the end that "the pattern of teacher assignment to any particular school shall not be identified as tailored for a heavy concentration of either Negro or white pupils in the schools." (R. 638, R. 454 and *U. S. v. Jefferson County Board of Education*, 372 F. 2d 836, aff'd en banc, 380 F. 2d 385, (5 Cir. 1967), cert. denied 389 U. S. 840, 19 L. Ed 2d 104, 88 S. Ct. 77 (1967). The fact that faculties in 53 out of 54[1] schools in this system have al-

[1] The small, three teacher and predominately white rural school located at Pine Level, Alabama has not yet desegregated its full-time faculty. The three teachers in this school live nearby and have been teaching at the Pine Level, Alabama school for many years. The school board has definite plans and is committed to desegregate the faculty of the Pine Level school in the 1969-1970 school year.

ready in fact been desegregated shows that this plan has been immediately implemented. Additionally, the Board conducts an in-service training program on a completely desegregated basis whereby experienced white and Negro teachers conduct observation lessons for desegregated faculty audiences (R. 634-635). The Administrative Council of the system is desegregated (R. 635) as well as all teacher institutes (R. 635).

B. *EXTENSIVE NUMERICAL PROGRESS IN FACULTY DESEGREGATION.* Pursuant to the Board's avowed plan and in accord with the directives of the Court of Appeals, progress in faculty desegregation has been accomplished and reported to the District Court. "Appendix A" (pp. 34-37, infra) to this brief is the portion of the report filed with the District Court on September 16, 1968, pertaining to full-time faculty desegregation.[2] This report shows 212 full-time faculty members to be teaching in 53 schools throughout the Montgomery County system where their race is presently in the minority.[3] The total full-time classroom faculty of the Montgomery system presently consists of 1,389 teachers. As previously noted, every school but one in the system now has a desegregated full-time faculty.

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[2] This report was filed pursuant to the June 1, 1967, order of the District Court as implemented by the order of February 24, 1968, as amended March 2, 1968. As this appendix shows, this report was served on the Government and on the Plaintiffs below.

[3] 111 Negro teachers in predominately white schools and 101 white teachers in predominately Negro schools. (Appendix "A" to this brief, pp. 36-37, infra.)

Faculty desegregation was initially commenced during September of 1967, with five white teachers in two predominantly Negro high schools and five Negro teachers in two predominantly white high schools. (R. 462-463). (The District Court on August 18, 1966, amended its prior order by allowing the school board until the 1967-1968 school year to commence desegregation of faculty and professional staff [R. 342-343].) This Board continued to make every effort to further substantially desegregate the school system but was plagued with faculty resignations throughout the Summer of 1967, to the point that two teaching positions in a predominantly Negro high school had to be filled several times with several different white faculty members [R. 555, 559, 564].

By September 22, 1967, twenty-five fulltime teachers were teaching students of the minority race throughout the system; on February 9, 1968, the number of minority assignments had risen to thirty-two and on March 15, 1968, thirty-nine fulltime classroom teachers were teaching in schools predominantly of another race.[4] In addition, during the Spring of 1968, forty-four student teachers were teaching in schools where their race was in the minority.[5]

The respondents during the period from September of 1967 to September of 1968, accelerated integration

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[4] Reports submitted to the District Court and served on all parties, on September 22, 1967 and March 18, 1968 and testimony of Walter McKee (R. 632-633).

[5] Ibid.

of the fulltime classroom faculties in this system from ten teachers in four schools at the beginning of September of 1967 to two hundred twelve fulltime teachers in fifty-three schools for the 1968-1969 school year. This evidences an increase of two thousand and twenty percent in the number of desegregated positions and an increase of twelve hundred twenty-five percent in the number of schools with desegregated faculties.

The supplemental report which is attached as "Appendix B" (pp. 38-44, infra) to this brief was filed pursuant to the District Court's directive.[6] This report shows that during the school year commencing in September of 1968 through December 15, 1968, 618 days were taught by substitute teachers in schools where their race is presently in the minority.[7] There was a total of 2,516 days taught during this period by all substitute teachers in the system. The December 16, 1968 report additionally shows that 14 out of a total of 54 night school teachers are teaching in minority assignments,[8] and that current progress in stu-

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[6] This report was filed pursuant to the June 1, 1967 order of the District Court as implemented by the order of February 24, 1968, as amended March 2, 1968. As this appendix shows, this report was served on the Government and on the Plaintiffs below.

[7] 300 days taught by Negro substitute teachers in predominately white schools and 318 days taught by white substitute teachers in predominately Negro schools. (Exhibit A of Appendix "B" to this brief, pp. 40-41, infra.)

[8] 8 white night school teachers in two predominately Negro schools and 6 Negro night school teachers in two predominately white schools. Only four schools in the system offer night school courses and the faculties of all of these have been desegregated. (Exhibit C of Appendix "B" to this brief, p. 43, infra.)

dent teacher assignments, which will be increased before student teachers begin work in the Spring of 1969, presently reflects 28 out of 155 student teachers assigned to schools where their race is presently in the minority.[9] (During the Spring of 1968 there were 44 out of 289 student teachers in schools where their race was in the minority.)

The December 16, 1968, report further shows that four teachers out of 17 hired since September, 1968, have been placed in schools where their race is presently in the minority.[10]

As reflected in the aforementioned reports, *all* schools in the Montgomery County system are *now* experiencing desegregation either through their full-time faculties, student bodies, or through both.

C. *DEMONSTRATED MEANINGFUL GOOD FAITH COMPLIANCE WITH CONSTITUTIONAL* MANDATES TO ACHIEVE A RACIALLY *NONDISCRIMINATORY SCHOOL SYSTEM.* The Court of Appeals recognized that the District Court had publicly complimented the Montgomery County Board some five times during the period from 1964 to 1967 on its efforts toward achieving desegregation. The Court of Appeals stated:

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[9] Seven white student teachers presently in predominately colored schools and 21 Negro student teachers in predominately white schools. (Exhibit D of Appendix "B" to this brief, pp. 43-44, infra.)

[10] Three new white teachers in predominately Negro schools and one new Negro teacher in a predominately white school. (Exhibit B of Appendix "B" to this brief, p. 42, infra.)

"We see no need to recite the history of the school board's efforts to comply with the constitutional mandate to desegregate its public schools. However, we note that progress has been made and that the school board has been complimented on its good faith efforts. We do not wish unduly to emphasize or de-emphasize good faith on the part of this particular board of education, but we do take note of the fact that this is the very first time it has been before this court. This case does not bear the 'many service stripes' mentioned in *United States v. Board of Educ. of Bessemer*, 5 Cir. 1968, ... F. 2d ..... [Nos. 25809, 25810, 25811, June 3, 1968]. See also *Davis v. Board of School Comm'rs of Mobile*, 393 F. 2d 690 (5 Cir. 1968). In our view, good faith conduct on the part of any litigant in any court, especially a court of equity and, more particularly, in the sensitive area of desegregation, is a vital element for appropriate consideration. Our feeling with respect to good faith is buttressed by the recent decision of the Supreme Court in *Green v. School Bd. of New Kent*, ... U. S. ....., 20 L Ed. 2d 716 (1968). Some five times, during the period from 1964 to 1967, the district court publicly complimented the Montgomery County School Board on its efforts toward achieving desegregation." (R. 751-752, 400 F. 2d 1, at pp. 2-3). (Footnotes omitted.)

The statements by the District Court as referred to by the Court of Appeals appear from the record as follows:

On September 5, 1964, the District Court stated:

"This Court now specifically finds and concludes that in the case of each of the applicants [Negro children applying for attendance in predominately white schools] whether the application was granted or denied, the action of the Montgomery County school authorities constituted a good faith implementation of the governing constitutional principles and a good faith compliance with the orders of this court." (R. 190 and 9 Race Rel. L. Rep. 1175.)

On May 5, 1965, the District Court stated:

"Let me say this; that I recognize the problems that exist in this particular school district, and I think the plaintiffs recognize them, and both parties in this law suit have, up to this point, demonstrated to me an awareness of their responsibilities not only to their clients, but to the school system, and I want to congratulate and compliment both the plaintiffs and particularly the school board, Montgomery County School Board, for its efforts as demonstrated last fall, in complying with the law as that law was reflected in the order of this Court." (R. 544.)

On August 27, 1965, the District Court stated:

"From the evidence in this case and from the history of this case as known by the Court, the defendant board and Superintendent have complied with and are continuing to comply with the applicable law as decreed by this Court on July 31, 1964." (R. 278.)

On May 25, 1967, the District Court stated:

"I would like to say this to you here in the presence of the plaintiffs' and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as professional educators and not as politicians. This present attitude is demonstrated here at this time; this past conduct on the part of these officials has, without any doubt inured to the benefit of the students regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have accomplished this largely through—or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar operations, is a considerable feat, for which this Community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate." (R. 547-548 and 400 F. 2d 1 at p. 3.)

Upon the conclusion of a hearing held on September 5, 1967, which is the first of the two hearings apparently forming the basis of the District Court's orders relating to faculty desegregation, the District Court stated from the bench:

"You are dealing here with a school system that you haven't had to take to your Appellate Courts a single time since you started. It is the only major

school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they have been ahead of most of your other systems in every field." (R. 576 and 400 F. 2d 1 at pp. 3-4).

ARGUMENT

INTRODUCTION AND SUMMARY

The Government and the plaintiffs urge this Court to require the Montgomery County Board of Education to reassign faculty members throughout this system according to a racial quota based on the racial composition of the entire faculty.[11] They urge an artificial and purely speculative "random distribution" of teachers in each school in the system in order to accomplish a computarized racial balance (Government's Brief, p. 8). These respondents recognize their affirmative responsibility to provide a desegregated, unitary

[11] The racial quota as proposed in the briefs of Petitioners on the merits would require a redistribution of faculty members so that the ratio of white to Negro teachers would be the same in each school as the ratio of white to Negro teachers in the entire system. The Petitioners in the respective petitions for certiorari presented the questions differently from their briefs on the merits. In the Government petition for certiorari (Government petition, p. 2) and in the plaintiff's petition for certiorari (Plaintiff's petition, p. 3) the Petitioners present the question as to whether the school board should be required to distribute faculty members so that "all schools would have approximately the same proportion of white and Negro teachers." After certiorari was granted, the Petitioners in their briefs on the merits (Government Brief, p. 2; Plaintiff's Brief, p. 3) now pose the question as to whether the school board should be required "to reassign its faculty members so that the ratio of Negro to white teachers *in each school* would be substantially the same as the ratio of Negro to white teachers throughout the system." (Emphasis supplied.)

and nonracial school system. These respondents recognize their responsibility to assign teachers without regard to race so that schools throughout the system are not racially identifiable by their faculties (*U. S. v. Jefferson County Board of Education*, 372 F. 2d 836, aff'd en banc, 380 F. 2d 385, (5 Cir. 1967) cert. denied 389 U. S. 840, 19 L. Ed. 2d 104, 88 S. Ct. 77 (1967). The objective of nonracially identifiable faculties in each school in this system will be accomplished by this School Board without the imposition of racial quotas which are without educational significance and are repugnant to quality education, regardless of race.

Petitioners seek to have this Court strike down, as vague and uncertain the mandate of the Court of Appeals which adopts the model decree of *U. S. v. Jefferson County Board of Education*, supra, and which clearly states that full faculty desegregation must be achieved without delay. (R. 761 and 766.)

The real and substantial progress which this Board has made in faculty desegregation is concrete evidence that an effective plan has been adopted and that the plan is in fact working now. *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968).

The compulsory racial quotas as urged by the Petitioners are totally unrealistic from the standpoint of quality education. The quotas would require the placement of faculty members according to percentages and numbers, and without realistic consideration of the important individual criteria essential in faculty placement. School teachers are individual human beings and must be treated as such in their professional

assignment. There is no law which prohibits a teacher from resigning or from seeking employment elsewhere or in another field. To shift teachers from one assignment to another or to initially place teachers merely on a basis of meeting a racial quota cannot produce educationally effective faculty placement. The forced employment of such procedures would lower the quality of education for Negro and white children alike. The respondents ask for the opportunity to establish that effective faculty desegregation can be accomplished and is being accomplished in accord with the responsibility to provide quality education.

To require faculty desegregation according to the racial ratio of white to Negro faculty in the entire system would result in a standard which would be subject to substantial variations from one school system to another and from year to year.

The Government in brief urges remedial measures in faculty assignment and states that although there is no "constitutional requirement" for a racially balanced faculty in public education (Government Brief, p. 13) such is a proper remedy to eliminate "racially disproportionate faculties." The Court of Appeals provided the remedy when the Court stated that faculty and staff desegregation must be immediately implemented and clearly held that "School boards must not use excuses to delay the achievement of full faculty and staff desegregation." (R. 766.) The requirements and the objectives have been clearly spelled out. The respondents are fulfilling the responsibility of faculty and staff desegregation. The constitutional rights of the plaintiffs to the end of being furnished a unitary, nonracial school system have

been fully protected without the employment of the admittedly unconstitutional means of achieving the ultimate objective.

I

REQUIREMENT OF MATHEMATICAL RATIOS IN FACULTY TRANSFER AND ASSIGNMENT IS UNWARRANTED UNDER FACTS AND APPLICABLE LAW.

The extensive progress which these respondents have made in faculty desegregation, together with their avowed plans to further completely desegregate all faculties in the system, renders the sweeping ratio requirement unnecessary and totally unjustified. This is especially true in light of the mandate of the Court of Appeals. The direction is clear. The objective is clear. The direction is right. The objective is now being reached. As previously noted, the current school year, 1968-1969, is the second year this system has been engaged in teacher and staff desegregation. (R. 342-343.) In an area of human relations, as complex and delicate as that of pupil-teacher relations which is the virtual heartstring of education, tremendous progress has indeed already been made. The faculty in every school but one in the Montgomery County system has been desegregated; 212 teachers are now engaged in desegregated assignments, and substantial and real desegregation presently exists in the area of substitute teachers, student teachers and night school faculties.

The faculty desegregation plan in effect in the Montgomery System not only promises to work *now*; it is in fact working *now*. The letter and the spirit

of *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed 2d 716, 88 S. Ct. 1689 (1968), have been met.

With such a substantial plan to completely desegregate faculty why then do these respondents so strenuously object to the ratio requirements as urged by petitioners?

Our answer, in an earnest plea for quality education, regardless of race, is as follows: (1) The racial ratio requirement constitutes an arbitrary and unwarranted burden on this Board and is not supported by the mandates of the Constitution of the United States or of this Court. The Government concedes in brief that "proportional allocation of faculty on the basis of race" is not constitutionally required. (Government Brief, p. 13). The Government and the plaintiffs urge the requirement of ratio allocation as a remedial measure. The Court of Appeals has provided the remedial mandate—that full faculty desegregation must be accomplished and must not be delayed. The remedy as prescribed by the Court of Appeals is entirely sufficient to accomplish the end of achieving a desegregated nonracially identified faculty. (2) To require faculty assignment according to a racial ratio would be to lose sight of the critical individual criteria imperative in quality faculty placement and would undoubtedly lower the educational opportunities of all children in this system, and throughout the Nation, regardless of race.

The President of Teachers College, Columbia University, Dr. John H. Fischer, in an article prepared for delivery at the Fourth Annual Conference of the Com-

mission on Civil Rights, Washington, D. C., May 3, 1962, made the following remarks:

"Many of the recent efforts to integrate Negro pupils into the mainstream of American public education have been built on the assumption that the problems are essentially administrative, legal or political. As a consequence, we have seen drives for what is called 'open enrollment' and other schemes to bring about, usually through directive action, a desired combination of races in particular classrooms or schools. Having worked in school administration for some twenty-seven years, I claim some knowledge of at least its limitations. *Although I hold that administrative procedures and actions can be useful in education, I grow steadily more certain that no major problem of education—by which I mean really effective teaching and learning—has ever been solved solely, or even primarily, by legal or administrative action. To be sure, such action often lays the necessary groundwork and provides the setting in which good teachers may carry on their work, but the critical point in any educational system is found ultimately in the relation between the teacher and the pupil.*"

* * *

"Nor is it enough to say that the school should accept the child where it finds him and raise him as high and as fast as it can toward an adequate level of cultural attainment. *To be sure, this is one of the school's functions; no teacher ever succeeds unless he first establishes rapport and communication with the pupil at the pupil's level.*"

* * *

"The focus of sound teaching is always on the in-

dividual, *for education is an intensely personal matter*, having its principal effect always within the person." (Emphasis supplied.)

Another eminent educator, I. N. Berlin, Associate Clinical Professor of Psychiatry, University of California School of Medicine, and for many years a consultant in child psychiatry to the public school system in California, in an article entitled "Desegregation Creates Problems, Too," as reviewed in the Saturday Review, June 15, 1963, edited by Hubert H. Humphrey, made the following significant observations:

> "Most teachers get their satisfactions in an underpaid and overworked profession from helping children learn. They know that helping children to get pleasure and feelings of self-worth from mastering academic tasks and acquiring skills is a prerequisite for any successful achievement in living, and especially any success at working at demanding jobs in our highly technical society. Teachers get their feelings of self-worth and pleasure from their effective help to children."

The Petitioners ask this Court to require a "random distribution" of the faculty throughout this system. This requirement would necessitate a redistribution of faculty members throughout the system to meet the required racial quotas. Aside from the multitude of overwhelming practical and administrative problems which are obvious, the demands of Petitioners would tragically eliminate realistic consideration of such proper faculty assignment criteria as training, experience, classroom performance and ability to fulfill the

specific requirements on the job.[12] It is uniformly recognized that teaching is an art,[13] that misassignment of faculty personnel constitutes one of the most serious problems to quality education and is a prevalent reason for teacher failure.[14]

The Government would have this Court disregard educational standards and recognized elements of quality in faculty placement assignment on the basis that the school board "may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconveniences." The case of *United States v. Crescent Amusement Company*, 323 U. S. 173, 89 L. Ed. 160, 65 S. Ct. 254, is cited as authority. The *Crescent Amusement* case in dealing with an injunction against future corporate violations of the Sherman Anti-Trust Act, can hardly be said to justify discarding recognized elements of quality education for the sake of mathematical racial balance. We believe that the Court of Appeals

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[12] In the work entitled "The School Personnel Administrator" 363 (1965), Gibson and Hunt, the following statement is made: "But before entrenched and respected educational doctrines relating to the hiring and assignment of teachers are ignored for the sake of speeding up teacher desegregation, the relative merits of the two objectives should be carefully compared. The quality of education a student receives depends heavily upon the competence of his teacher and upon his curriculum. Faculty selection based on merit is designed to implement the attainment of this goal." See Vol. 64, Mich. L. Rev. 692, Fall, 1966, note 62 at pp. 701-702.

[13] *U. S. v. Jefferson County Board of Education*, 373 F. 2d 836, 892 aff'd en banc, 380 F. 2d 385, (5 Cir. 1967), cert. denied 389 U. S. 840, 19 L. Ed. 2d 104, 88 S. Ct. 77 (1967).

[14] "The Assignment and Misassignment of American Teachers," National Education Association of the United States, 1965.

made it perfectly clear that faculty desegregation must be affirmatively eliminated and that delays or repetitions would not be tolerated. It is in this perspective that we understand this Court to have cited the *Crescent Amusement* case in the recent *Green* opinion, 391 U. S. 438 n. 4.

We must go behind numbers and statistics, which in themselves speak progress, and look to the ultimate solution of the complex problems to be encountered. This District Court apparently recognized the administrative problems inherent in faculty transfer when on March 2, 1968, seven days after the Court had ordered two minority teachers in schools with less than 12 faculty members, this directive of the District Court was changed to one such minority teacher. (R. 522-523.) The administrative problems which the District Court must have envisioned in the amended order will multiply a thousand fold as the problems of day to day school administration develop together with the ominous task of finding teachers with the requisite skills necessary for the replacement of transferred personnel. It is here that individual criteria in faculty placement is critical. School teachers just cannot, in the best interest of education, be moved as pawns in a game. They are more than numbers and percentages—they are human beings with individual motivations, ambitions and desires to impart knowledge. It was brought out during the hearing and it is only logical, that a teacher in a particular school may have a special interest or aptitude in student guidance or counseling, in extracurricular endeavors, such as student organizations and honor societies, or play the piano or help with the football team, as well as being a

classroom teacher. The School Board is limited as to where a teacher may be assigned by the teaching certificate and by the experience of the teacher.[15] The Government in brief discounts these elements as "few factors" which fail to justify hardship. (Government Brief, p. 19.) The critical area of faculty placement however cannot be minimized in quality education. Neither is it an answer to suggest that if one teacher has special skills then another may be transferred, (Government Brief, p. 19) for all teachers have special skills which peculiarly fit the needs of the school to which the teacher is assigned and all teachers are more than mere numbers and percentages.

The small school will encounter faculty placement problems varied and different from those encountered by the large school and the individual personality and motivation of each teacher is critical in faculty placement. The imparting of knowledge from teacher to child is a very delicate and personal endeavor.

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[15] In the article entitled, "The Assignment and Misassignment of American Teachers," National Education Association of the United States (1965), the following observation is made:

"Our most earnest claims to professional status are undermined if anyone can be assigned to teach almost anything; if a history major who has six college credits in chemistry can become a chemistry teacher overnight, or if a high school physical education teacher can take over a second grade without any preparation in the teaching of reading, or if a new teacher who is from a socially and racially homogeneous suburban community and who has a low tolerance for cultural and attitudinal differences is assigned to a school characterized by cultural and racial differences and tensions. Our claims to professional status are undermined if we cannot offer the public reasonable guarantees that their children's teachers are qualified for their assignments."

The Court of Appeals recognized these educationally important problems in holding that "Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective. *Consideration must be given to the availability of teaching personnel, sound school administrative procedures and other important factors.*" (Emphasis ours.) (R. 765-766.) The standard of quality education demands that utmost care be given to the placement of teaching personnel. It cannot possibly be in the best interest of the school children of this Country, regardless of race, to callously discard the vital considerations of proper faculty placement as being "vague notions which permit subjective discrimination." (Petition in No. 798, p. 7.)

There is certainly nothing vague in the order of the Court of Appeals requiring assignment of teachers as opposed to voluntary transfer in effecting desegregated faculties. (R. 758.) There is nothing vague in the Court of Appeal's reaffirmance of *The Jefferson* model decree with regard to faculty desegregation, (R. 761) and in specifically stating:

"We have continued to emphasize the responsibility of school boards in achieving effective faculty desegregation" (R. 761) and that "School Boards must not use excuses to delay the achievement of full faculty and staff desegregation." (R. 766.)

There is certainly nothing vague in the Circuit Court's statement that:

"Nothing we say in this opinion shall be con-

strued to mean that we authorize, permit, approve or condone the consideration of race, or color, as a factor in the employment, assignment, reassignment, promotion, demotion, or dismissal of fulltime teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. *Any conduct by any school board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated.*" (R. 766.) (Emphasis ours.)

It is noted that the Court of Appeals of the United States for the Fifth Circuit on June 3, 1968, speaking through Chief Judge John R. Brown, expressly rejected the imposition of the very mathematical ratio here urged upon the Court. *United States v. Board of Education of the City of Bessemer,* et al, 396 F, 2d 44 (5 Cir. 1968). The Court of Appeals in discussing *United States v. Jefferson County Board of Education,* supra, stated in the *Bessemer* case:

"We are requested to do both too much and too little. The school boards with a sincerity of counsel we do not question, urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges adds to and extends *Jefferson.* We think neither alternative is wise."

"First, we think it unwise and out of keeping with the declared goal and subsequent consistent practice

of Circuit-wide uniformity to tinker with the model decree." (396 F. 2d 44 at pp. 49-50.)

The Court added:

"We think it important to do three positive things. The first is to rule out the voluntary approach. The second is to fix an immediate target date. The third is to fix the date—implicit in *Jefferson*—for full compliance." (396 F. 2d 44 at p. 50.)

The standards thus set forth by the Court of Appeals in *Bessemer* are equally applicable in Montgomery and provide a *realistic* plan that is working *now* to desegregate the faculty and staff of this system. *Green v. County School Board of New Kent County*, supra.

II

REQUIREMENT OF MATHEMATICAL RATIO WOULD DEFEAT ULTIMATE OBJECTIVE OF COMPLETE FACULTY AND STAFF DESEGRERATION.

The standard as adopted throughout the Country by which faculty desegregation is measured is that the assignment of teachers should be so "that the pattern of teacher assignment to any particular school should not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school." *United States v. Jefferson County Board of Education*, supra. A truly desegregated nonracially identified faculty is, of course, the real ultimate objective. There are many school systems throughout this Circuit and undoubtedly throughout the Nation which have very few or no Negro teachers. There are other such systems which have very few or no white teachers. The requirement,

as sought by the Petitioners, of having the same ratio of majority to minority teachers in each school as is reflected by faculty distribution throughout the system (Government Petition, p. 5) is totally unrealistic and in many instances would "lock in" segregation. Some districts, as their "ultimate objective" would have over 70% or 80% of one race or the other teaching in each school in the system.[16] This situation, of course, is undesirable and places an impossible burden on school boards which are constantly competing with other boards for qualified Negro and white teachers, and an undue burden on the teachers themselves. The objective of uniformity would be lost with adoption of Petitioners' position and lost also would be the rights of many children throughout the Country to obtain a truly desegregated education.[17]

Under the ratio "appropriate yardstick" (Government Petition, p. 5) as now urged by Petitioners, faculty desegregation would not be measured by the con-

[16] For example, there were 14% Negro teachers in the Oklahoma City school system during the year 1964-1965. (*Dowell v. School Board of Oklahoma City*, 244 F. Supp. 971 at p. 976) while there were 78% Negro teachers in the District of Columbia school system during the school year 1966-1967; (*Hobson v. Hansen*, 269 F. Supp. 401, at p. 421); there are some districts in this Circuit with very few white teachers and other districts with very few Negro teachers. In Birmingham, Alabama, approximately 100 miles from Montgomery, Alabama there are 26% Negro teachers and 74% white teachers. *United States and Linda Stout vs. Jefferson County Board of Education*, pending in the 5th Circuit Court of Appeals, Case No. 26584, argued November 21, 1968.

[17] On page 8 of the Petition the Government concedes that the ratio application would become Nationwide: "It is a matter that concerns virtually all school desegregation cases, in the North as well as in the South."

sistently recognized standard as to whether the pattern of teacher assignment to any particular school is identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, but rather by the ratio of white to Negro faculty members throughout the school system. This inevitably would result in a variable yardstick of utter confusion depending on the faculty composition in the various school districts throughout the Nation and in faculty desegregation being based on locality and subject to change from year to year rather than on well settled constitutional principles. Indeed the Fifth Circuit was wise in the case of *United States v. Board of Education of the City of Bessemer*, supra, in refusing to "tinker with the model decree" to the point of directing such an unwise, unfair and indeed, unconstitutional requirement.

The Petitioners seek to avoid the illogical effect of the proposed ratio requirement by now insisting in brief that it would not be a permanent requirement and that the School Boards would be free to hire additional teachers to overcome racial imbalance. (Government Brief, P. 13, Plaintiff's Brief, p. 27). The fact remains, however, that faculty desegregation, under the Petitioner's proposed ratio, would be measured not by whether a school is racially identifiable due to faculty assignment, but by the racial composition of the entire faculty of the system, which will inevitably vary considerably from one school system to another.

III

THE REQUIREMENT OF FACULTY DESEGREGATION WITHOUT MATHEMATICAL OR RACIAL RATIO PERCENTAGES DOES NOT CONFLICT WITH PRIOR DECISIONS OF THE FIFTH CIRCUIT, OTHER CIRCUIT COURTS OF APPEAL, OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES.

As previously noted, and as stated in the panel decision of the Court of Appeals, the requirement of mathematical or racial percentage ratios was expressly rejected by the Fifth Circuit Court of Appeals in *United States v. Board of Education of the City of Bessemer*, supra.[18]

The Eighth Circuit also rejected such a mathematical formula in the case of *Yarbrough v. Hulbert-West Memphis School District No. 4*, 380 F. 2d 962 (8 Cir. 1967).[19]

The Fourth Circuit in the case of *Bowman v. County School Board of Charles City County, Virginia*, 382

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[18] Prior to the decision in *United States v. Board of Education of Bessemer*, supra, the Fifth Circuit Court of Appeals had refrained from requiring a fixed mathematical ratio in faculty desegregation in the cases of *United States v. Jefferson County Board of Education*, 372 F. 2d 836, aff'd en banc, 380 F. 2d 385 (5 Cir. 1967) cert. denied 389 U. S. 840, 19 L. Ed 2d 104, 88 S. Ct. 77 (1967); *Stell v. Board of Public Education for City of Savannah*, 387 F. 2d 486 (5 Cir., December 1967); *Birdie Mae Davis v. Board of School Commissioners of Mobile*, 393 F. 2d 690 (5 Cir., March 1968). In accord with these decisions, the three Judge Court in the case of *Anthony T. Lee, et al., v. Macon County Board*, 267 F. Supp. 458 (M. D., Ala. 1967) involving 99 school districts throughout the State of Alabama, has imposed no mathematical ratio with regard to faculty desegregation.

[19] The Eighth Circuit in the *Yarbrough v. Hulbert-West Memphis School District No. 4*, supra, in discussing its prior decision

F. 2d 326 at p. 329 (4 Cir. 1967) followed and applied the decision and uniform decree of the Fifth Circuit in the case of *United States v. Jefferson*, supra, and noted that:

> "By that decree, (Jefferson-Uniform Decree) school boards are required to take affirmative steps to accomplish substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year and, wherever possible, to assign more than one member of the minority race to each desegregated faculty. As much should be required here."

The Fourth Circuit cautioned and concluded that:

> "What is done on remand, however, must be done upon a supplemented record after an appraisal of the

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in *Kelley v. Altheimer, Arkansas Public School District*, 378 F. 2d 483 (8 Cir. 1967) made the following statement:

> "We say in passing that this panel does not regard *Altheimer* as imposing any rigid mathematical formula which in certain situations could itself be arbitrary and without educational significance. We regard that case as one requiring a reluctant school board to get on with its task of achieving faculty and staff desegregation and assignment to comport with equitable and constitutional requirements divorced from racial considerations. Numbers and percentages per se are not the ultimate answer but, up to a point, they touch upon realities. This, we think, is the significance of *Altheimer*."

Thus, the Eighth Circuit did not impose as stringent a faculty requirement on a "reluctant school board" with but two schools, as the Government now urges to be applied in Montgomery, Alabama, with 54 schools and to a school board which the District Court has on several previous occasions found to be complying in good faith with all orders of the Court.

practical, administrative and other problems, if any, remaining to be solved and overcome."

The Circuit Court of Appeals for the Tenth Circuit approved a mathematical ratio requirement in the case of *Board of Education of Oklahoma City v. Dowell*, 375 F. 2d 158 (10 Cir. 1967.) The District Court had decreed the ratio requirement after all other efforts had failed and after the School Board had refused to take action on a plan formulated by Court appointed experts. (*Dowell v. Board of Education of Oklahoma City*, 244 F. Supp. 971, W. D. Okl., 1965.) The 1965 District Court decree as affirmed by the Tenth Circuit noted that the Negro faculty personnel constituted but 14% of the total systemwide faculty and that there was a faculty turnover in the system of about 15% per year. The District Court then held that by 1970 there should be the same "approximate percentage of non-white teachers in each school as then in the system," with a reasonable tolerance of 10%. The Court specifically noted that such a requirement provided for stability in school faculties during the integration process and that the requirement was "keying the change to personnel turnover figures," indicating that approximately 15% of the total faculty is replaced each year. The Court in the *Dowell* decision thus gave the board five years to accomplish the desegregation process and specifically noted "Thus, faculty integration may be accomplished by replacements to the faculty as well as by transfers." The Tenth Circuit therefore approved faculty desegregation rang-

ing from 4% to 24%[20] and to be accomplished from replacement, as well as transfer, over a five year period. This is a far cry from a ratio of three to two as urged by the Petitioners. It is also noted that the District Court felt that the "essential or most important point" was that the board refused to adopt a meaningful plan, (244 F. Supp. 971 at p. 976.) The case sub judice presents a far different situation with a school board that has a realistic desegregation plan which is effectively operating now.

The two District Court cases, *Coppedge v. Franklin County Board of Education*, 273 F. Supp. 289 (E. D. N. C. 1967) aff'd 394 F. 2d 410 (4 Cir. 1968), and *Kier v. County Board of Augusta County, Virginia*, 249 F. Supp. 239 (W. D. Va. 1966), which require some degree of mathematical standard in faculty desegregation are each likewise clearly distinguished from the case at bar. In the *Coppedge* case there had been in fact, a case history of intimidation to the point of bomb threats and reprisals by the community toward retarding the desegregation plan. No such history exists in the Montgomery County sys-

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[20] The Government contends that this degree of tolerance is not what the Court intended. (Government Brief, p. 11, n. 4.) However, the 1965 District Court decree is quoted by the Circuit Court as follows:

> "(4) Desegregation of all faculty personnel so that by 1970 the faculty ratio of whites to non-whites in each school will be the same as the faculty ratio of whites to non-whites in the entire system, subject to a reasonable tolerance of approximately 10%."

Our analysis of what this provision means seems correct in view of the 15% annual turnover in the Oklahoma City System. Here we have an example of a standard by which faculty segregation is measured annually varying even within the same system.

tem where we have an effectively operating plan. In the *Kier* case, the Court specifically noted that "of a total of over 10,000 school children, only slightly over 500 or 5% are Negro." It is obvious that problems and administrative burdens encountered by a school board with a relatively small student population, including only 5% Negroes, are not comparable to those of a system the size of Montgomery, Alabama.

Never has such a far reaching ratio balance requirement been directed by this Honorable Court. *Bradley v. School Board of Education of City of Richmond*, 382 U. S. 103, 15 L. Ed. 2d 187, 86 S. Ct. 224 (1965). It cannot be now asserted with validity that the decision of the Court of Appeals is in conflict with applicable decisions of this Court, or that the decision of the Court of Appeals has departed from either the letter or the spirit of *Brown I*,[21] *Brown II*,[22] *Bradley*,[23] and *Green*.[24]

The proposed ratio provision as urged by Petitioners contains built-in variables which, of course, will result in glaring inconsistencies between the Circuits, between the States, and even between the various school districts within a given State.

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[21] *Brown v. Board of Education*, 347 U. S. 483, 98 L. Ed 873, 74 S. Ct. 686.

[22] *Brown v. Board of Education*, 349 U. S. 294, 99 L. Ed 1083, 75 S. Ct. 753.

[23] *Bradley v. School Board of Education of City of Richmond*, 382 U. S. 103, 15 L. Ed 2d 187, 86 S. Ct. 224.

[24] *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed 2d 716, 88 S. Ct. 1689.

IV

TO REQUIRE A SCHOOL BOARD WHICH IS MAKING MEANINGFUL AND IMMEDIATE PROGRESS IN FACULTY AND STAFF DESEGREGATION TO ADOPT "MATHEMATICAL RACIAL RATIO" AS "ULTIMATE OBJECTIVE" IS UNWARRANTED AND PREMATURE.

This Court in *Green v. County School Board of New Kent County*, supra stated:

> "It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress towards disestablishing state-imposed segregation."

The Court of Appeals in the opinion now before the Court stated:

> "Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion, or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. Any conduct by any school board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated. It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. School boards must not use excuses to delay the achievement of full faculty and staff desegregation." (R. 766, 400 F. 2d 1 at p. 8.)

This school board has demonstrated meaningful and actual progress in desegregating the full-time faculties in 53 out of 54 schools in this County, with 212 full-time faculty members presently teaching in schools where their race is in the minority. Much actual progress has already been achieved in the area of substitute teachers, student teachers and night school faculty desegregation.

The racial ratio requirement urged by Petitioners, with its very questionable merit, built-in inconsistencies and inequities, is not warranted under the facts of this case.

The Court of Appeals has established 1970 as the completion date for full compliance.[25]

Especially in view of the progress already demonstrated by this school board, it would be wise to assess the progress of the school board on such "completion date" rather than to now speculate as to what may or may not be then required.

As this Court stated in the case of *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912, 94 L. Ed. 562, 70 S. Ct. 252, in denying the Petition for a Writ of Certiorari there requested:

> "Wise adjudication has its own time for ripening."

We do hereby state to this Court that the Montgomery County Board of Education will completely desegregate the faculty and staff of this system without the imposition of the arbitrary and educationally unsound racial ratio requirement.

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[25] *United States v. Board of Education of Bessemer, et al*, 396 F. 2d 44 at p. 52 (5 Cir. 1968).

CONCLUSION

The Petitioners call upon this Court for more than a constitutional directive for respondents to provide a racially nondiscriminatory school system. Petitioners seek to have the Court enter into the complex details of just how full compliance is to be achieved. The nationwide, circuitwide and statewide inconsistencies which would inevitably result from the imposition of the proposed racial ratio requirement exemplify that such a proposal indeed lacks wisdom. The progress which these respondents have made in the area of faculty desegregation clearly evidences that a racial ratio requirement is unnecessary. The Petitioners' constitutional rights have been fully protected by the remedial mandate of the Court of Appeals and by the recognition by these respondents of their constitutional duty to furnish a nondiscriminatory school system. Petitioners need not and should not call upon this Court for more.

For the foregoing reasons it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

VAUGHAN HILL ROBISON
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Montgomery, Alabama 36104

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Counsel for Respondents

April 15, 1969

APPENDICES

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Arlam Carr, et al., plaintiffs,	:	
Vs.	:	
Montgomery County Board of Education, et al., defendants,	:	Civil Action No. 2072-N
United States of America, amicus curiae	:	

Pursuant to the Decree and Order of this Court dated June 1, 1967, and the Decree and Order of this Court dated February 24, 1968, as amended March 2, 1968, and specifically in compliance with Section VII, REPORTS TO THE COURT, Subsection A. *Report of Choice Period;* Subsection B. *Report on Faculty Assignments;* and Subsection C. *Report After School Opening,* of said Order dated June 1, 1967, and in compliance with Section V, REPORTS, Subsection A. *Reports Previously Ordered,* Subsection B. *Faculty,* B-1, B-2, B-3 and B-4; Subsection C. *Transportation,* and Subsection D. *Jefferson Davis High School and Other New Schools;* comes now the defendants in the above styled cause and files this report with attached Exhibits.

HILL, ROBISON, BELSER AND PHELPS

By s/V. H. Robison

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served by hand mail delivery a copy of this Report with Exhibits attached on Mr. Fred D. Gray, attorney of record for the Plaintiffs at his office at 352 Dexter Avenue, Montgomery, Alabama, and on Mr. Ben Hardeman, United States Attorney for the Middle District of Alabama, Northern Division, at his office in the Federal Building, Montgomery, Alabama, representing the United States of America, Amicus Curiae, on this 16th day of September, 1968.

s/V. H. ROBISON

MONTGOMERY PUBLIC SCHOOLS

TEACHING STAFF ASSIGNMENTS AS OF SEPTEMBER 15, 1968

	School	Negro	White	Total	Grades
1.	Baldwin Jr. High	4*	27	31	7-9
2.	Bear	2*	14	16	1-6
3.	Bellinger Hill	1*	5	6	1-6
4.	Bellingrath Jr. High	6*	40	46	1-9
5.	Billingslea	7	1*	8	1-6
6.	Booker Washington Elementary	14	4*	18	1-6
7.	Booker Washington Jr. High	21	6*	27	7-9
8.	Booker Washington Sr. High	26	7*	33	10-12
9.	Capitol Heights Elementary	3*	16	19	1-6
10.	Capitol Heights Jr. High	4*	31	35	7-9
11.	Carver Elementary	21	5*	26	1-6
12.	Carver Jr. High	20	4*	24	7-9
13.	Carver Sr. High	43	8*	51	10-12
14.	Catoma	1*	7	8	1-6
15.	Chilton	1*	5	6	1-6
16.	Chisholm	3*	21	24	1-6
17.	Cloverdale Jr. High	6*	35	41	1-9
18.	Crump	1*	10	11	1-6
19.	Daisy Lawrence	18	6*	24	1-6
20.	Dalraida	2*	15	17	1-6
21.	Dannelly	4*	20	24	1-6
22.	Davis	3*	18	21	1-6
23.	Dunbar High	41	5*	46	1-12
24.	Fews	16	5*	21	1-6
25.	Flowers	3*	20	23	1-6
26.	Floyd Jr. High	6*	37	43	1-9
27.	Forest Avenue	1*	9	10	1-6
28.	Georgia Washington High	40	7*	47	1-12

School	Negro	White	Total	Grades
29. Goode Street	3*	7	10	1-6
30. Goodwyn Jr. High	6*	37	43	7-9
31. Hale	19	3*	22	1-6
32. Harrison	3*	15	18	1-6
33. Hayneville Road Jr. High	41	8*	49	1-9
34. Head	2*	14	16	1-6
35. Highland Avenue	1*	11	12	1-6
36. Highland Gardens	4*	20	24	1-6
37. Houston Hill Jr. High	13	6*	19	7-9
38. Jefferson Davis High	7*	29	36	10-12
39. Johnson	3*	17	20	1-6
40. Lanier High	9*	81	90	10-12
41. Lee High	10*	72	82	10-12
42. Loveless Jr. High	38	5*	43	1-9
43. McDavid	17	4*	21	1-6
44. McIntyre Jr. High	31	9*	40	1-9
45. MacMillan	1*	10	11	1-6
46. Madison Park	8	2*	10	1-6
47. Montgomery County High	2*	19	21	1-12
48. Morningview	2*	15	17	1-6
49. Paterson	20	6*	26	1-6
50. Pendar Street	3*	15	18	1-6
51. Pike Road Jr. High	1*	7	8	1-9
52. Pine Level		3	3	1-6
53. Pintlala Jr. High	2*	7	9	1-9
54. Southlawn	1*	9	10	1-6
Speech Therapists	1**	4**	5**	
	566	823	1,389	
	111*	101*	212*	

* Teaching in Minority Assignments

** Teach in all elementary schools

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ARLAM CARR, ET AL., PLAINTIFFS,	:	
Vs.	:	
MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,	:	CIVIL ACTION
DEFENDANTS,	:	No. 2072-N
UNITED STATES OF AMERICA, AMICUS CURIAE	:	

In compliance with the Orders of this Court, Part VII of the June 1, 1967 Order and Part V of the February 24, 1968 Order of this Court, "REPORTS," the following information is submitted as attached exhibits:

"Exhibit A"—Report of Substitute Teachers between September 15 and December 15, 1968.

"Exhibit B"—New Teachers Hired Between September 15 and December 15, 1968.

"Exhibit C"—Report of Teacher Assignments in Night Schools between September 15 and December 15, 1968.

"Exhibit D"—Report of Student Teacher Assignments as of December 15, 1968.

HILL, ROBISON, BELSER AND PHELPS

By s/V. H. ROBISON

Attorneys for the Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served by hand mail delivery a copy of the report with exhibits attached on Mr. Ben Hardeman, United States Attorney for the Middle District of Alabama, Northern Division, at his office in the Federal Building, Montgomery, Alabama, representing the United States of America, Amicus Curiae, and by ordinary mail, postage prepaid, on Fred D. Gray, Attorney of Record for the plaintiffs, at his office at 352 Dexter Avenue, Montgomery, Alabama, all on this the 16th day of December, 1968.

s/V. H. ROBISON

EXHIBIT A

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS
REPORT OF SUBSTITUTE TEACHERS BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1963

Name of School	Days Taught By Negro Substitute Teacher	Days Taught By White Substitute Teacher
Baldwin Jr. High	6*	87
Bear	3*	12
Bellinger Hill	2*	3
Bellingrath Jr. High	25*	99
Billingslea	6	5*
Booker Washington Elem.	24	25*
Booker Washington Jr. High	39	21*
Booker Washington Sr. High	31	26*
Capitol Heights Elem.	8*	19
Capitol Heights Jr. High	17*	64
Carver Elementary	43	11*
Carver Jr. High	40	14*
Carver Sr. High	34	50*
Catoma	26*	8
Chilton	0	4
Chisholm	4*	47
Cloverdale	20*	63
Crump	4*	11
Daisy Lawrence	15	2*
Dalraida	5*	23
Dannelly	12*	31
Davis	11*	41
Dunbar	55	0
Fews	14	18*
Flowers	4*	48
Floyd	17*	75
Forest Avenue	3*	14
Georgia Washington	18	35*
Goode Street	10*	29

Name of School	Days Taught By Negro Substitute Teacher	Days Taught By White Substitute Teacher
Goodwyn Jr. High	21*	62
Hale	43	35*
Harrison	3*	15
Hayneville Road	43	8*
Head	4*	38
Highland Avenue	3*	10
Highland Gardens	9*	31
Houston Hill Jr. High	20	2*
Jefferson Davis High	12*	36
Johnson	3*	23
Lanier	16*	90
Lee	34*	45
Loveless	128	27*
McDavid	33	17*
McIntyre	96	8*
MacMillan	5*	22
Madison Park	15	4*
Montgomery County High	0	33
Morningview	3*	27
Paterson	43	10*
Pendar Street	8*	35
Pike Road	0	0
Pine Level	0	0
Pintlala	0	5
Southlawn	2*	8
	1,040	1,476
	300*	318*

In compliance with Section V, B. 2 of the Supplemental Plan.

* Teaching in Minority Assignments

EXHIBIT B

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

CITY AND COUNTY

MONTGOMERY, ALABAMA

SUPERINTENDENT'S OFFICE DECEMBER 15, 1968

NEW TEACHERS HIRED BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1968

	Name	Race	School
1.	Louise H. Nachman	White*	Paterson Elem.
2.	Ether D. Boyd	Negro	Booker Washington Sr.
3.	Judy D. Johnson	White	Lanier Sr. High
4.	Odell S. Graham	Negro	Loveless Elem.
5.	Jean P. Tashlik	White	Baldwin Jr. High
6.	Susan Diane Setzer	White	Crump Elem.
7.	Carol deBlois	White*	Hale Elem
8.	Pamela G. Priest	White	Jefferson Davis Sr.
9.	Dorothy Leona Jones	White	Baldwin Jr. High
10.	Ann Griswold	White	Children's Center
11.	Lydia S. Williams	Negro*	Davis Elem.
12.	Virginia F. Sewell	White	Forest Ave. Elem.
13.	Charles L. Williamson	White	Capitol Hgts. Jr. High
14.	Rosa R. Kelly	White*	McIntyre Elem.
15.	Dorothy R. Pegues	White	Southlawn Elem.
16.	Rebecca Ann McArthur	White	Goode Street Elem.
17.	Marian Shultz Stephenson	White	Lanier Sr. High

* Teaching in Minority Assignments

EXHIBIT C

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS
CITY AND COUNTY
MONTGOMERY, ALABAMA

REPORT OF TEACHER ASSIGNMENTS IN NIGHT SCHOOLS BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1968

School	White Teachers	Colored Teachers	Total
Booker Washington	4*	9	13
Carver	4*	12	16
Lanier	12	3*	15
Lee	7	3*	10
Total	27	27	54
	8*	6*	

* Teaching in Minority Assignments

EXHIBIT D

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

REPORT OF STUDENT TEACHER ASSIGNMENTS AS OF DECEMBER 15, 1968

Name of School	White Student Teachers	Negro Student Teachers
Baldwin Junior High	1	
Bear Elementary	2	1*
Booker Washington Elementary		6
Booker Washington Jr. High		7
Booker Washington Sr. High	1*	12
Capitol Heights Elementry		1*
Capitol Heights Jr. High	3	
Carver Elementary		2
Carver Junior High	1*	2
Carver Senior High		11

Chisholm Elementary	1	
Cloverdale Junior High	2	
Crump Elementary		1*
Daisy Lawrence Elementary		3
Dannelly Elementary	3	
Davis Elementary	4	1*
Dunbar		3
Fews Elementary		3
Flowers Elementary	1	1*
Floyd Junior High	3	
Georgia Washington		3
Goode Street Elementary		1*
Goodwyn Junior High	3	
Hale Elementary		2
Hayneville Road Junior High		10
Highland Gardens Elementary	1	1*
Houston Hill Junior High	1*	7
Jefferson Davis Senior High	2	2*
Johnson Elementary	2	1*
Lanier Senior High	6	4*
Lee Senior High	3	4*
Loveless Junior High		9
McDavid Elementary	3*	2
McIntyre Junior High		4
MacMillan Elementary		1*
Montgomery County High	2	
Paterson Elementary	1*	2
Pendar Street Elementary		1*
Southlawn Elementary		1*
	46	109
	7*	21*

* Teaching in Minority Assignments

SUPREME COURT OF THE UNITED STATES

Nos. 798 AND 997.—OCTOBER TERM, 1968.

United States, Petitioner, 798 *v.* Montgomery County Board of Education et al. Arlam Carr, Jr., by Arlam Carr and Johnnie Carr, etc., et al., Petitioners, 997 *v.* Montgomery County Board of Education et al.	On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 2, 1969.]

MR. JUSTICE BLACK delivered the opinion of the Court.

In this case the United States District Court at Montgomery, Alabama, ordered the local Montgomery County Board of Education to bring about a racial desegregation of the faculty and the staff of the local county school system. 289 F. Supp. 647 (1968). Dissatisfied with the District Court's order, the board appealed. A panel of the Court of Appeals affirmed the District Court's order but, by a two to one vote, modified it in part, 400 F. 2d 1 (1968).[1] A petition for rehearing *en banc* was denied by an evenly divided Court, six to six, thereby leaving standing the modifications in the District Court's order made by the panel.[2] On petitions of the United States as intervenor in No. 798, and the individual plaintiffs in No. 997, we granted certiorari. 393 U. S. 1116 (1969).

[1] The dissent from the original panel opinion is reported at 402 F. 2d 782.

[2] The dissents from the denial, *en banc*, of the petition for rehearing are reported at 402 F. 2d 784, 787.

Fifteen years ago on May 17, 1954, we decided that segregation of the races in the public schools is unconstitutional. *Brown* v. *Board of Education*, 347 U. S. 483 (*Brown I*). In that case we left undecided the manner in which the transition from segregated to unitary school systems would be achieved, and set the case down for another hearing, inviting the Attorney General of the United States and the Attorneys General of the States providing for racial segregation in the public schools to present their views on the best ways to implement and enforce our judgment. We devoted four days to the argument on this single problem, and all the affected parties were given the opportunity to present their views at length. After careful consideration of the many viewpoints so fully aired by the parties, we announced our decision in *Brown II*, 349 U. S. 294 (1955). We held that the primary responsibility for abolishing the system of segregated schools would rest with the local school authorities. In some of the States that argued before us, the laws permitted but did not require racial segregation, and we noted that in some of these States "substantial steps to eliminate racial discrimination in public schools have already been taken . . . ." *Id.*, at 299. Many other States had for many years maintained a completely separate system of schools for whites and nonwhites, and the laws of these States, both civil and criminal, had been written to keep this segregated system of schools inviolate. The practices, habits, and customs had for generations made this segregated school system a fixed part of the daily life and expectations of the people. Recognizing these indisputable facts, we neither expected nor ordered that a complete abandonment of the old and adoption of a new system be accomplished overnight. The changes were to be made "at the earliest practicable date" and with "all deliberate speed." *Id.*, at 300, 301. We were not content, however, to leave this task in the

unsupervised hands of local school authorities, trained as most would be under the old laws and practices, with loyalties to the system of separate white and Negro schools. As we stressed then, "[I]t should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Id.*, at 300. The problem of delays by local school authorities during the transition period was therefore to be the responsibility of courts, local courts so far as practicable, those courts to be guided by traditional equitable flexibility to shape remedies in order to adjust and reconcile public and private needs. These courts were charged in our *Brown II* opinion, *id.*, at 300, with a duty to:

> ". . . require that the defendants [local school authorities] make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date."

The record shows that neither Montgomery County nor any other area in Alabama voluntarily took any effective steps to integrate the public schools for about 10 years after our *Brown I* opinion. In fact the record makes clear that the state government and its school officials attempted in every way possible to continue the dual system of racially segregated schools in defiance of our repeated unanimous holdings that such a system violated the United States Constitution.[3]

[3] A substantial part of the history of the continued support by Alabama's governor and other state officials for its dual system of schools, completely separating white and nonwhite students, faculty,

There the matter stood in Alabama in May 1964 when the present action was brought by Negro children and their parents, with participation by the United States as *amicus curiae*. Apparently up to that time Montgomery County, and indeed all other schools in the State, had operated, so far as actual racial integration was concerned, as though our *Brown* cases had never been decided. Obviously voluntary integration by the local school officials in Montgomery had not proved to be even partially successful. Consequently, if Negro children of school age were to receive their constitutional rights as we had declared them to exist, the coercive assistance of courts was imperatively called for. So, after preliminary procedural matters were disposed of, answers filed and issues joined, a trial took place. On July 31, 1964, District Judge Johnson handed down an opinion and entered an order. 232 F. Supp. 705. The judge found that at the time:

> "There is only one school district for Montgomery County, Alabama, with the County Board of Education and the Superintendent of Education of Montgomery County, Alabama, exercising complete control over the entire system. In this school system for the school year 1963–64, there were in attendance approximately 15,000 Negro children and approximately 25,000 white children. In this system the Montgomery County Board of Education owns and operates approximately 77 schools.
>
> "From the evidence in this case, this Court further specifically finds that, through policy, custom and practice, the Montgomery County Board of Education, functioning at the present time through the

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and staff, can be found in the opinion of the three-judge court for the Middle District of Alabama in *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458 (1967), affirmed by this Court under the title of *Wallace* v. *United States*, 389 U. S. 215 (1967).

named individual defendants, operates a dual school system based upon race and color; that is to say, that, through this policy, practice and custom, these officials operate one set of schools to be attended exclusively by Negro students and one set of schools to be attended exclusively by white students. The evidence further reflects that the teachers are assigned according to race; Negro teachers are assigned only to schools attended by Negro students and white teachers are assigned only to schools attended by white students." 232 F. Supp., at 707.

Based on his findings, Judge Johnson ordered that integration of certain grades begin in September 1964, but in this first order did not require efforts to desegregate the faculty. The school board, acting under the State's school placement law, finally admitted eight Negro students out of the 29 who had sought transfers to white schools under the judge's July 31 order. The judge refused to order admission of the 21 Negro students whose transfer applications had been rejected by the school officials.

The 1964 initial order of Judge Johnson was followed by yearly proceedings, opinions, and orders by him.[4] Hearings, preceding these additional orders, followed the filing each year under the judge's direction of a report of the school board's plans for proceeding with desegregation. These annual reports and orders, together with transcripts of the discussions at the hearings, seem to reveal a growing recognition on the part of the school board of its responsibility to achieve integration as rapidly as practicable. The record, however, also reveals that in some areas the board was not moving as rapidly as it could to fulfill this duty, and the record shows a

[4] These orders were reported as follows: May 18, 1965, 10 Race Rel. L. Rep. 582; March 22, 1966, 253 F. Supp. 306; August 18, 1966, 11 Race Rel. L. Rep. 1716; June 1, 1967, 12 Race Rel. L. Rep. 1200.

constant effort by the judge to expedite the process of moving as rapidly as practical toward the goal of a wholly unitary system of schools, not divided by race as to either students or faculty. During these years of what turned out to be an exchange of ideas between judge and school board officials, the judge, from time to time, found it possible to compliment the board on its cooperation with him in trying to bring about a fully integrated school system. Some of these complimentary remarks are set out in the opinion of the Court of Appeals modifying the judge's decree. 400 F. 2d, at 3, n. 3. On the other hand the board did not see eye to eye with Judge Johnson on the speed with which segregation should be wiped out "root and branch" as we have held it must be done. *Green* v. *County School Board*, 391 U. S. 430, 438 (1968). The school board, having to face the "complexities arising from the transition to a system of public education freed of racial discrimination," *Brown II*, 349 U. S., at 299, was constantly sparring for time; the judge, upon whom was thrust the difficult task of insuring the achievement of complete integration at the earliest practicable date, was constantly urging that no unnecessary delay could be allowed in reaching complete compliance with our mandate that racially segregated public schools be made nothing but a matter of past history. In this context of clashing objectives it is not surprising that the judge's most recent 1968 order should have failed fully to satisfy either side. It is gratifying, however, that the differences are so minor as they appear to us to be.

In his 1968 order Judge Johnson provided for safeguards to assure that construction of new schools or additions to existing schools would not follow a pattern tending to perpetuate segregation. The order also provided for the adoption of nondiscriminatory bus routes and for other safeguards to insure that the board's trans-

portation policy would not tend to perpetuate segregation. The order provided for detailed steps to eliminate the impression existing in the school district that the new Jefferson Davis High School and two new elementary schools were to be used primarily by white students. The order also included a requirement that the board file in the near future further specific reports detailing the steps taken to comply with each point of the order. Nearly all of these aspects of the order were accepted by the school board and not challenged in its appeal to the Court of Appeals. Of the provisions so far mentioned, only one aspect of the provision relating to Jefferson Davis High School was challenged in the Court of Appeals, and after the Court of Appeals upheld Judge Johnson's order on this point, the school board accepted its decision and did not seek review on the question here.

The dispute in this case thus centers only on that part of the 1968 order which deals with faculty and staff desegregation, a goal that we have recognized to be an important aspect of the basic task of achieving a public school system wholly free from racial discrimination. See, *e. g.*, *Bradley* v. *School Board*, 382 U. S. 103, (1965); *Rogers* v. *Paul*, 382 U. S. 198 (1965). Judge Johnson noted that in 1966 he had ordered the board to begin the process of faculty desegregation in the 1966–1967 school year but that the board had not made adequate progress toward this goal. He also found:

> "The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968–69." 289 F. Supp., at 650.

He therefore concluded that a more specific order would be appropriate under all the circumstances to establish the minimum amount of progress that would be required for the future. To this end his order provided that the board must move toward a goal under which "in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system." *Id.*, at 654. In addition, the order set forth a specific schedule. The ratio of Negro to white teachers in the assignment of substitute, student, and night school teachers in each school was to be almost immediately made substantially the same as the ratio of Negro to white teachers in each of these groups for the system as a whole. With respect to full-time teachers, a more gradual schedule was set forth. At the time the ratio of white to Negro full-time teachers in the system as a whole was three to two. For the 1968–1969 school year, each school with fewer than 12 teachers was required to have at least two full-time teachers whose race was different from the race of the majority of the faculty at that school, and in schools with 12 or more teachers, the race of at least one out of every six faculty and staff members was required to be different from the race of the majority of the faculty and staff members at that school. The goals to be required for future years were not specified but were reserved for later decision. About a week later Judge Johnson amended part of the original order by providing that in the 1968–1969 term schools with less than 12 teachers would be required to have only one full-time teacher of the minority race rather than two, as he had originally required.

It was the part of the District Court's order containing this ratio pattern that prompted the modification of the order by the Court of Appeals. Agreeing that the District Court had properly found from "extensive hearings . . . that desegregation of faculties in the Montgomery

County school system was lagging and that appellants [the school board] had failed to comply with earlier orders of the court requiring full faculty desegregation," and noting that the testimony of school officials themselves indicated the need for more specific guidelines,[5] the Court of Appeals nevertheless struck down parts of the order which it viewed as requiring "fixed mathematical" ratios. It held that the part of the order setting a specific goal for the 1968–1969 school year should be

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[5] The Court of Appeals quoted the following exerpt from the testimony of Associate Superintendent W. S. Garrett:

"Q. Well, under your plan, when do you estimate that faculty desegregation will be finally accomplished in terms of the objective of the court order removing—

"A. Well, now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of. It says that you will have reasonable desegregation of faculty and that you will strive toward having each faculty not recognizable as being staffed for a particular race. That is what I get out of it.

"Q. Well, let—

"A. So I — I can't — this court order is in fairly general terms; I can't answer that question.

"Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished?

"A. Well, that would depend on what the Board's definition of that is, the court's definition of that.

"Q. Do you have a definition of that?

"A. Not at this point; we have discussed that many times, and I do not have a definition of—of what that would mean.

"Q. No one has told you, given you a definition in terms of mechanics, in terms of numbers, none of your superiors?

"A. No, as far as I know, no other school personnel man in America has. I have talked to many of them. What we are striving to do is to make progress and keep going and hope that somewhere along the line we will have achieved the—what the court has in mind. But if you will look at that court order, you will see it doesn't lay down the precise terms exactly what that means; it is a broad definition."

modified to require only "*substantially* or *approximately*" the 5–1 ratio required by Judge Johnson's order. With respect to the ultimate objective for the future, it held that the numerical ratio should be eliminated and that compliance should not be tested solely by the achievement of specified ratios. In so holding, the Court of Appeals made many arguments against rigid or inflexible orders in this kind of case. These arguments might possibly be more troublesome if we read the District Court's order as being absolutely rigid and inflexible, as did the Court of Appeals. But after a careful consideration of the whole record we cannot believe that Judge Johnson had any such intention. During the four or five years that he held hearings and considered the problem before him, new orders, as previously shown, were issued annually and sometimes more often. On at least one occasion Judge Johnson, on his own motion, amended his outstanding order because a less stringent order for another district had been approved by the Court of Appeals. This was done in order not to inflict any possible injustice on the Montgomery school system. Indeed the record is filled with statements by Judge Johnson showing his full understanding of the fact that, as this Court also has recognized, in this field the way must always be left open for experimentation.[6]

[6] As we stated in *Green* v. *County School Board*, *supra*, 391 U. S., at 439:

"There is no universal answer to the complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness."

Judge Johnson's order now before us was adopted in the spirit of this Court's opinion in *Green* v. *County School Board, supra,* 391 U. S., at 439, in that his plan "promises realistically to work, and promises realistically to work *now.*" The modifications ordered by the panel of the Court of Appeals, while of course not intended to do so, would, we think, take from the order some of its capacity to expedite, by means of specific commands, the day when a completely unified, unitary, nondiscriminatory school system becomes a reality instead of a hope. We believe it best to leave Judge Johnson's order as written rather than as modified by the 2–1 panel, particularly in view of the fact that the Court of Appeals as a whole was evenly divided on this subject. We also believe that under all the circumstances of this case we follow the original plan outlined in *Brown II,* as brought up to date by this Court's opinions in *Green* v. *County School Board, supra,* and *Griffin* v. *School Board,* 377 U. S. 218, 233–234 (1964), by accepting the more specific and expeditious order of Judge Johnson, whose patience and wisdom are written for all to see and read on the pages of the five-year record before us.

It is good to be able to decide a case with the feelings we have about this one. The differences between the parties are exceedingly narrow. Respondents, members of the Montgomery County school board, state clearly in their brief, "These respondents recognize their affirmative responsibility to provide a desegregated, unitary and nonracial school system. These respondents recognize their responsibility to assign teachers without regard to race so that schools throughout the system are not racially identifiable by their faculties . . . ." Brief for Respondents, at 11–12. Petitioners, on the other hand, do not argue for precisely equal ratios in every single school under all circumstances. As the United States, petitioner in No. 798, recognizes in its brief, the District Court's order "is

designed as a *remedy for* past racial assignment . . . . We do not, in other words, argue here that racially balanced faculties are constitutionally or legally required." Brief for the United States, at 13. In short, the Montgomery school board, and its counsel, assert their purpose to bring about a racially integrated school system as early as practicable in good-faith obedience to this Court's decisions. Both the district judge and the Court of Appeals have accorded to the parties and their counsel courteous and patient consideration; there is no sign of lack of interest in the cause of either justice or education in the views maintained by any of the parties or in the orders entered by either of the courts below. Despite the fact that the individual plaintiffs in this case have with some reason argued that Judge Johnson should have gone farther to protect their rights than he did, we approve his order as he wrote it. This, we believe, is the best course we can take in the interest of the plaintiffs and the public school system of Alabama. We hope and believe that this order and the approval that we now give it will carry Alabama a long distance on its way toward obediece to the law of the land as we have declared it in the two *Brown* cases and those that have followed them.

The judgment of the Court of Appeals is reversed, and the case is remanded with directions to affirm the judgment of the District Court.

It is so ordered.